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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON MONDAY, 20TH
FEBRUARY, 2012, AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Tom Ojienda	-	The Presiding Chair, Kenya
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Gertrude Chawatama	-	Commissioner, Zambia
Berhanu Dinka	-	Commissioner, Ethiopia
Ahmed Farah	-	Commissioner, Kenya
Tom Chavangi	-	Leader of Evidence

(The Commission assembled at 9.40 a.m.)

The Presiding Chair (Commissioner Ojienda): I want to welcome all of you to this session. Every person in the hall is expected to participate in these proceedings in silence. The witnesses who have been called will be led in their evidence by the Leader of Evidence on the matters in question. The commissioners may then ask them questions for clarification. Evidence will be given after the witness is sworn in. Please, I ask all of you to respect the evidence of the witnesses even if you do not agree with them.

You may take photographs, but we encourage you not to take photographs of witnesses when they are testifying.

(The Presiding Chair (Commissioner Ojienda) introduced himself and other TJRC Commissioners)

Leader of Evidence, do you have witnesses?

Mr. Tom Chavangi: Our first witness is Mercy Njoki Kariuki.

(Ms. Mercy Njoki Kariuki took the oath)

Mr. Tom Chavangi: Mercy, you presented a statement to the Commission. When did you do that?

Ms. Mercy Njoki Kariuki: I submitted it last week.

Mr. Tom Chavangi: It is a statement touching on how your husband disappeared, tortured and eventually died in the police cells.

Ms. Mercy Njoki Kariuki: Yes.

Mr. Tom Chavangi: Kindly, proceed and state the same to the Commission.

Ms. Mercy Njoki Kariuki: My husband left home for work. In the evening, we got information from his colleagues that he had been picked up by policemen. Two weeks passed with no information about him. Later, we read in the *Daily Nation* that members of Mwakenya Group had been jailed for seven years. He was jailed together with another man from our area. That is the time we started visiting him at Kamiti Prison. We were allowed to visit him once a month.

After one-and-a-half years, we went and found that he was ill. At one point; that was on 5th, we were told that the police who were in charge of him were not present. Later, on 19th, we went there and found that he had died. We were given five days to bury him. We buried him in his father's farm in Kibichiku in Kabete.

Mr. Tom Chavangi: When did you come to know that your husband was arrested?

Ms. Mercy Njoki Kariuki: We found that out in the newspaper. He had been arrested on 26th June, 1986.

Mr. Tom Chavangi: It was on 26th and not on 9th?

Ms. Mercy Njoki Kariuki: He was arrested on 9th, but he was jailed on 26th. He later passed on in 1988 on 5th May.

Mr. Tom Chavangi: Before you got the information from the newspaper, you said that somebody had reported to you that your husband had been arrested. Can you recall the name of that person?

Ms. Mercy Njoki Kariuki: When he was arrested, his colleague came and gave us the information that he had been picked up by police at his place of work. He told us that he was not sure where my husband had been taken. We were left with no further information.

Mr. Tom Chavangi: Do you remember the name of his colleague who brought you the information?

Ms. Mercy Njoki Kariuki: He was from Gikuni and his name is Mwaura. I only know of that one name.

Mr. Tom Chavangi: Did they work together or they were just colleagues in the village?

Ms. Mercy Njoki Kariuki: They were colleagues at work. When I got married, he came along with his wife to visit me.

Mr. Tom Chavangi: So, it is somebody you can identify?

Ms. Mercy Njoki Kariuki: Yes, I can identify him, but I am not sure whether he still works there, but he comes from Gikuni.

Mr. Tom Chavangi: Who gave you the orders to bury your husband in five days?

Ms. Mercy Njoki Kariuki: It was the Government of the day. When we were told he had died, we were given only five days to bury him. It was said that the Government would be in charge of the funeral. So, we buried him after the five days.

Mr. Tom Chavangi: Was there a specific person from the Government who gave the orders, say, the chief, the village elder, the DO, and DC and so on, or was it a letter written?

Ms. Mercy Njoki Kariuki: The person who got the information that my husband had died was his brother. He is the one who came with the information that we had five days to bury him. The information came from Kamiti. He was told that we had five days to bury him.

Mr. Tom Chavangi: You said that when you visited your husband, he told you that he had contracted TB due to internal injuries. What caused the internal injuries?

Ms. Mercy Njoki Kariuki: They did not tell us.

Mr. Tom Chavangi: In terms of your husband's employer; Kenya Railways, since 1988, have they done anything for you? Have you received any assistance or communication from them about what was the status of your husband?

Ms. Mercy Njoki Kariuki: No, I was not able to follow up because I was young. His father was a chief at that time in Kibichiku in Kabete. When they asked for his NSSF card, it was delivered by the brother. He told me about the money he had. He told me that they were aware he had a wife and children. I was told to collect that money. The brother told me that the father would go for the money, something he did. They did not tell me about it, but I believe they were given the money.

Mr. Tom Chavangi: You are not privy to that information. You do not know how much money was given to them?

Ms. Mercy Njoki Kariuki: His brother told me that they received Kshs8, 500.

Mr. Tom Chavangi: Did you get that money?

Ms. Mercy Njoki Kariuki: I did not get anything.

Mr. Tom Chavangi: Thank you, Presiding Chair.

Commissioner Dinka: Thank you, Mercy, for your testimony. Was an autopsy done?

Ms. Mercy Njoki Kariuki: No, the Government of the day did not bother. As we were going on with the funeral they would come to spy and listen to what we were saying.

Commissioner Dinka: Has anyone in your family gone to any Government agency to protest or to bring the matter to some kind of judicial process after the death of your husband?

Ms. Mercy Njoki Kariuki: Nobody has tried that.

Commissioner Dinka: About the pension from the Kenya Railways, have you ever checked with your husband's brother if he ever received any money? Why do you suspect that money might have been paid to him?

Ms. Mercy Njoki Kariuki: It is my brother-in-law who told me that my father-in-law went for the money. I am not sure if anything else went on because I was thrown out of their home. My father-in-law has since passed on.

Commissioner Dinka: Have you approached the Kenya Railways Corporation to seek your husband's pension or whatever is due to him?

Ms. Mercy Njoki Kariuki: No. I have not approached them.

Commissioner Dinka: Why?

Ms. Mercy Njoki Kariuki: It is because I moved to Ol Kalou which is far away. I have not been employed. I have been a casual worker and I have not had enough bus fare to get me here. I do not think there could give me any more money because I was only told about the NSSF money.

Commissioner Dinka: Thank you very much. I have no further question.

The Acting Chair (Commissioner Namachanja): My sister Mercy, thank you for coming before this Commission to represent the women who lost their husbands in the manner in which you lost your husband and, therefore, being left to struggle with raising up your children.

Ms. Mercy Njoki Kariuki: I have suffered a lot. This is because I was not in employment and so I was dependent on my husband. I was left with the children when they were very young. I was not able to educate them well. I took one to school, but I could not sustain that for lack of funds. I also have medical problems.

I would like the Government to ensure that nobody suffers the way I have. My children have suffered. I would not like any Government to be like the Government that has made us suffer all this time. I have not had any help from anywhere. I would like the Government to care for its people and their rights. Nobody should suffer.

The Acting Chair (Commissioner Namachanja): You found it so difficult to answer your children when they asked you about their father's arrest.

Ms. Mercy Njoki Kariuki: They asked where the father went. When they were young, I did not know what to tell them was the reason for his arrest. Now that they are older, I tell them that the Government arrested and tortured him. Since they read newspapers, I tell them that it is the clamor for multipartyism that led to his arrest and subsequent death in prison after being tortured.

The Acting Chair (Commissioner Namachanja): Do you think that your children are benefitting from the changes that their father struggled for?

Ms. Mercy Njoki Kariuki: They are benefitting, but on a personal basis, they could have benefited a lot from their father's upbringing. They can say the country has improved.

The Acting Chair (Commissioner Namachanja): Up to what level of education did they go to?

Ms. Mercy Njoki Kariuki: One of them went up to Form IV and the other one up to Standard VIII.

The Acting Chair (Commissioner Namachanja): What are they doing for a living now?

Ms. Mercy Njoki Kariuki: They are casual labourers.

The Acting Chair (Commissioner Namachanja): Thank you. I want to congratulate you for taking care of your children under difficult circumstances. Sorry for losing your husband in the manner that you lost him. We appreciate that he contributed to the democratization process that most Kenyans are enjoying now.

Ms. Mercy Njoki Kariuki: Thank you.

Commissioner Chawatama: Thank you, Mercy. Yesterday as I read your statement and wrote down a few questions to ask you, I was troubled. I realized that you were a very young person and so was your husband. He died at the age of 30 years! I knew that you would have to sit here and talk to us about what you went through. This is something that happened about 25 years ago and I knew that you would have a lot of difficulty to go back to the past and think about your husband and the life that you would have lived. It is not easy for us to sit here and ask you questions, but because of the powers of the Commission, it is important for us to find out certain things from you so that when we make recommendations, we are coming from an informed position. Do you understand that?

Ms. Mercy Njoki Kariuki: Yes.

Commissioner Chawatama: What was life like when your husband disappeared? What were your thoughts?

Ms. Mercy Njoki Kariuki: When the Mwakenya issues started coming up, he would tell me that he suspected that he would be arrested. He told me that he was not sure how it would go. He also told me that he was not a member of that group. I remember one day my father-in-law called him aside and asked him questions. He also told me that my husband had refused to answer his question and that I ask him on his behalf. My husband told me that he had no information about Mwakenya.

I told him that we would find out from the newspapers. On the first week of his disappearance, I would think about whether or not he was a member of Mwakenya. I was not sure he would be killed for that reason. I wondered how we would cope with life without him and if we would ever find him if he was killed. I did not have the appetite to eat.

Commissioner Chawatama: What about when you read in the newspapers that he was in the cells? What did you go through?

Ms. Mercy Njoki Kariuki: That is the time I was wondering whether he would ever jail. He was not in a good state while in prison. I was not sure of any step that I would take because I was very young. I had a difficult time and there was nobody to answer my question.

Commissioner Chawatama: From the article in the newspaper were you able to tell that your husband was charged with an offence?

Ms. Mercy Njoki Kariuki: Yes.

Commissioner Chawatama: When you visited him in prison, did he tell you whether or not he had been taken to court for trial?

Ms. Mercy Njoki Kariuki: He could not talk to us. He was not allowed to. Policemen were there by his side. We just talked of general things. He told me that he would be in prison until his time to be there is over.

Commissioner Chawatama: Between now and then, have you come to learn whether or not, in fact there was a trial that took place? Do you have any documents to show that he might have gone through a court process?

Ms. Mercy Njoki Kariuki: No. We did not find out anything else. We only got information from the newspapers that he had been jailed for seven years for belonging to the Mwakenya Group.

Commissioner Chawatama: Could you tell us about your husband's health before his incarceration?

Ms. Mercy Njoki Kariuki: He was very healthy. He used to work as a construction worker. He would come from work in the evening and do more casual work. He did not have any health problems the time I was living with him. Even his parents told me that he had never had any health issues.

Commissioner Chawatama: In what state did you find your husband when you saw him the first time in incarceration?

Ms. Mercy Njoki Kariuki: We found him looking very tired and depressed like he was suffering a lot. His body looked weak. He was very emotional. He cried when he spoke to us.

Commissioner Chawatama: Did he tell you if he received any medication?

(Ms. Mercy Njoki Kariuki sobbed)

As a Commission, we are empowered to recommend for prosecution or further investigation. I can clearly see that in this case, there was no justice that was done. Since we are the TJRC, we need to get information from you although it is very painful. I am sorry for that. Do you wish me to continue or stop?

I am asking that question because even if somebody is in prison, they should still enjoy certain rights. If somebody is not well and they are in prison, they are entitled to medication. It is important for us to know what was done by the prison authorities as far as their responsibilities were concerned.

Ms. Mercy Njoki Kariuki: He did not tell me anything about medication. He could not be allowed to give us such information. However, his fellow inmates after they came out of prison told me that he had been denied medical access. They had even gone on a hunger strike for him to go to hospital. At that time, he was very sick and so he passed on.

Commissioner Chawatama: Do you know whether an X-ray was done? Do you have any document to show that he went to hospital?

Ms. Mercy Njoki Kariuki: No. That could not be found. In his death certificate, they indicated that he had died of tuberculosis.

Commissioner Chawatama: Were you allowed to take him food when he was in prison?

Ms. Mercy Njoki Kariuki: He could not be given anything. We took him a Bible.

Commissioner Chawatama: You were not allowed to take him food the whole period he was there?

Ms. Mercy Njoki Kariuki: No, we could not take anything to him.

Commissioner Chawatama: Do you recall how long he had worked for the Kenya Railways?

Ms. Mercy Njoki Kariuki: I am not too sure. When I got married to him, he was already employed.

Commissioner Chawatama: How long had you lived together as husband and wife?

Ms. Mercy Njoki Kariuki: Three years.

Commissioner Chawatama: When you came to write a statement with us, you had some expectations about us. Could you share with us what your expectations are from this hearing?

Ms. Mercy Njoki Kariuki: My expectations are that I will be assisted because of the suffering that my husband went through. Since the current Government is listening to its citizens, I hope they will help me because of the sufferings that I have gone through.

Commissioner Chawatama: I have to apologize for asking you hard questions and forcing you to remember a lot of painful things. I am so sorry for that, but I pray that as a result of this process, some of the pain and suffering that you have gone through will be mitigated. I admire your strength. I cannot imagine what it was like for you to bring up two children who were very young.

What is encouraging is that you had the courage to live and carry on and to be a mother to your children. You are a very strong woman and I have a lot of admiration for you. Thank you for making time to appear before us.

The Presiding Chair (Commissioner Ojienda): Thank you, judge, for those judicial questions and the deep interrogation. Mercy, I want to express the deep pain that I share with you. I have heard you testify, and unlike the judge and the other commissioners, I live in this country and was around when the arrests around Mwakenya occurred and people disappeared. They were tortured, jailed and taken to court at 6.00 a.m. in the morning; I know that the phase that this country has gone through is something that caused pain to a lot of people like you. I will not ask any question but will just inform you that the Commission shall do what it has to do in terms of the provisions of the TJRC Act as mentioned. Thank you. Leader of Evidence, call the next witness?

Mr. Tom Chavangi: Commissioners, our next witness is James Kago Waweru. He is Nairobi No.3. Thank you very much.

(Mr. James Waweru took the oath)

Mr. Tom Chavangi: Commissioners and Presiding Chair, I was emphasizing the fact that we have not invited some of the people mentioned in this statement. So, he should not mention them by name, but he can use their titles like “advocate” or “former president”. Thank you very much. Mr. James Kago Waweru, for the record, kindly state your names again.

Mr. James Kago Waweru: My names are James Kago Waweru from Githunguri in Kiambu County.

Mr. Tom Chavangi: James Kago Waweru, you are before this Commission to touch on what befell you on 7th July, 1990, otherwise known as *Saba Saba* Day, when you were injured as a result of a police bullet, hence you were disfigured. Kindly state to the Commission what really happened. Thank you.

Mr. James Kago Waweru: I was working in Nairobi with Hotel Intercontinental. I used to commute from home every day when I was on the day or evening shift. During the day, I would leave home at about 5 a.m. On that day; 7th July, 1990, I did not know that people had been told not to go to work. As I used to go to work daily, I woke up as usual at 5. a.m., and went to the bus stop. There was no *matatu* on that day. There were no vehicles moving. There were no modern mobile phones but only call boxes. So, I went to make a call and we were many of us. We queued. When it came to my turn, I dialed the first number which was received by my supervisor and he told me that if there were no public vehicles to take me to work, I should just stay in that area, and if it was not possible, I should try again later. So, I replaced the handset and stayed. There were many people. Everybody wanted to inform the others where they were and I stayed for very long. At about 9.30 a.m., I decided to call again. I queued and made another call which was received by my supervisor again and he told me that if there is no transport, I should just go back home. When I was still talking over the phone, I noticed people were running helter skelter. There were policemen who had come in and started shooting indiscriminately. I felt something go through me and I did not know that it was a bullet. The handset fell down. There were very many people and they all disappeared. For a few minutes, I felt like my mouth was no longer there and it was only the tongue that was there. When I fell down, I saw the flesh from my mouth just hanging and it was very hard. It was like a piece of wood. I cried out to God and said: “Now God these people have shot me; I was not going to steal but I was just going to work. God, if I die, just take me. Wherever you put the others, put me there because I am not a thief.” I now knew that I had been shot and saw policemen all over the place shooting people. It was as if they had been sent to our side to finish all the people. So, I started crawling on my stomach. There was nobody. God spoke to me and told me: “Kago, I do not think you will die.” I spoke to God a lot and I asked him a lot of questions; it was as if I was talking to God alone because he told me to remove the jacket to bring the flesh and put it up this way and tie it on my head. He gave me the strength. I put my hand inside the mouth, I removed the blood and I started breathing. There was a petrol station near the booths. I

lay there. I opened my eyes and saw what was happening. Since I had been shot, it was as if I had died because the images that came before me were those of my friends. I saw so many friends. God gave me the strength and I sat up, tied the flesh, removed the blood, I prayed and then I got up. I held it like this. Where I was shot, there was a hospital nearby. So, I held myself like this and walked on my legs. When I stood up, I saw a policeman behind me and I heard one speaking in Swahili and he said that they had shot somebody, who had got up and walked and there he was. I was trying to encourage myself. He asked his boss whether they should finish me or let me go. One said they should leave me alone to go. I indicated to them that even if they shot me in the back, I had reached where I wanted to go. So, I walked to the hospital. When I got to the hospital, I did not have a mouth but just the tongue and the people heard that somebody had been shot. They asked who had been shot and it was Kago. All the citizens came to the hospital and since I knew that I would die, I asked for a pencil. In the hospital that I went to, there was no medication. The only thing they did was that somebody came with a piece of paper and wiped me which stopped the bleeding. In that hospital, there was a lady who knew me. She screamed and said that if this one dies, we will answer a lot of questions because he has found us at the hospital and we must struggle. I wrote on the piece of paper the names of the people, and that if I did not die, they should take me to Aga Khan Hospital in Nairobi. I wrote that the things that I had belonged to my children. I even forgot about my wife. At that time, I had three children and I handed the writer-up to the hospital. I left the rest to God.

People heard that Kago had been shot and they came and filled up the hospital. So, the policemen could not come and kill me or shoot anybody else. They tried looking for a vehicle but they could not get one. Only one vehicle came in which was a Government vehicle. One driver volunteered and he said that he was going to take me to Aga Khan Hospital. Very many people came inside that vehicle. My wife, brother and a councillor entered the vehicle together with the driver. It was one of these tiny vehicles belonging to the Veterinary Department and it could not move fast. We were with the then councilor, whose name was Karuri, and he was putting my head there and anytime he saw that I was running out of breath, he would help to clear the blood from the system. As we drove, there were very many policemen along the road just shooting people. At a place called Ndumberi, there was somebody who had been killed. At Kinoo, another person had been killed. In Kiambu, another one had been shot just like me but the bullet had gone into the neck. He was being taken to Kiambu Hospital. I insisted that even if I was going to die, they should take me to the hospital that I had requested to be taken to. So, we drove on. We found another policeman at a roadblock. The driver was stopped and asked whose vehicle that was for. He said that it was a Government vehicle. He was asked why it did not have a number plate. He told them that he had removed it because the citizens were fighting the Government. He was instructed to refix the number plate and he was beaten up. When they saw me, they told him to take me where they were taking me. When we got to Nairobi, we went to the hospital where I was admitted and after that, I lost consciousness.

(The witness sobbed)

So, I was admitted and I stayed for one-and-a-half years in the hospital. The bullet was removed but it had shattered my jaw. I do not have a jaw. It is just a tiny thing which was left here. I have stayed for all those years without a jaw. I have a lot of problems because as you see me now, it is very difficult for me to eat. I eat only very soft things like mashed food. I still have the strings in the mouth on this side. I had a doctor who was attending to me by the name of Hamesh. He said that after the wound which had stayed for a very long time and on which they had put a plate, there would still be a hole and the flesh would not join up again. I went to the theatre almost six times and they would put it and remove it; since I was employed and the sole bread winner, after I recovered slightly, I asked the company if I could go back to work. They told me that I could go back if I believed I was okay. So, I went back to work. My job was there and I can show the Commission evidence of it. That was after I had been shot. Since I used to do service work, they told me they could pay me, because I could not work in my condition. They told me to go home, and that they would pay me for all the days I had worked. I told them that it was okay. They told me to write a short letter indicating that I was the one who had voluntarily resigned. So, I wrote it because I thought it would be very hard for me to work with the white people laughing at me and asking me what had happened to my face; I used to do room service and every time, they would look at me and they would tell me that I was eating their food on the way. So, I thought that I was getting embarrassed. I also thought I would mess up the name of the company, yet they had supported me during my time in hospital. So, I decided just to go. I went back home. I stayed with my children who were in school. My wife still depended on me and also my mother. With all the money that I was paid, I managed to pay fees for my three children. At the moment, one is in Form Two. I just stay like that without a job. I just sit at home. I had a good job before.

So, I thought that keeping quiet was not the best and I started talking to friends and they told me to go to the Kenya Human Rights Commission (KHRC). I asked one of my friends to take me to them. He told me that it was a very long process; we needed to write a letter to the Attorney-General. He wrote it and sent it to the Attorney-General. There was no reply. We wrote two letters, one to the KHRC and another one to another unknown person. We wrote so many letters and since all those years, I have not received anything from the Government. So, when I wanted to make a follow-up with the Government, I was told that there was no Saba Saba case which will be taken to court for hearing. So, I thought the people who could help us were the KHRC. We went to them in Westlands. We took a letter to them and talked to somebody called Moji. We left with the letter as they looked for a lawyer for us. We were told that the lawyer had died. After staying at home for a while, I was summoned to an office in Nairobi by a certain lawyer who asked me my name. I was told to pay Kshs2, 000 for my file. I told him that it was the KHRC that was presiding over this case and I did not have a single penny. He then wrote KHRC on my file. The mistake that I made was that I never took the file number. He told me to go home and he would summon me when he needed me again. I have stayed at home for years and nobody has communicated to me. Recently, I saw the TJRC people and I would like to thank them because I am being heard, yet for all those years, nobody has heard me. I have gone to so many places and nobody ever listens to me. So, they came at home and I told them my story. They took a file and went with it. Recently,

I was told to come here. I came and I was interviewed. I was then told to go home. I did not even stay for three days. I was told to come here today. So, I am very happy because at least I have been given a hearing. You have also persevered listening to my story, because it is a story that whenever I remember, I take up a piece of paper and write it down. I have a book that I have written about the whole story. It is called *The Saba Saba Survivor*. I have it and I still write. I write a few words. I really did not go to school but I write little by little and keep it. When it will be complete, I hope to publish it. Thank you very much.

Mr. Tom Chavangi: Thank you very much, Mr. Kago, and we are very sorry for what happened to you. It is the police who did this to you. This is very embarrassing for this country. What is your health like?

Mr. James Kago Waweru: When I stay for about three months, I start bleeding. I do not really know where the blood comes from. Right now, I have stitches on the inside. I feel the stitches that have stayed there. Because this was done at Aga Khan Hospital, I stay with them because I do not want them to be touched by anybody else. I was told that Doctor Ramesh, who was attending to me, passed away. So, I stay with them. Before that, I worked at Intercontinental Hotel. Very many of the whites knew me because I was very friendly to them. When I was okay, and in good good health, I used even to serve the President. I used to hold the food like this and they would serve themselves, but when this happened, I would not go before them. I spoke to some guests and they told me that they were going to London. They told me that they would like to take my X-ray photo. They told me that it was complicated taking an X-ray of my head. They asked if I agreed, they will take an X-ray. I agreed. So, they gave me money from their own pockets and I went for the X-rays; I brought the X-rays to them and they took them to London *Indian doctor at a hospital called Kings College*. They would go and come back, and eventually, they brought my report. My doctor told me if I was able to raise the fare, I could go to this hospital and see him. His name is Dr. Bhatia. They told me that I could be treated but it would be a major operation because they would have to remove the lip and repair the jaw. After I stopped working and went home, both my parents passed away. So, I could not pursue that operation. I just left it up to today.

Mr. Tom Chavangi: Mr. Kago, we are really sorry for that. I hope that God will help you out of this and the commissioners will tell you the right procedure to follow so that you can get the right treatment. There are some letters that you said you have written to the Attorney-General and the human rights organizations. Could you be having copies of these letters now?

Mr. James Kago Waweru: There is one thing that I did. I was mixed up. I will give photocopies. I have been all over Kenya. At that time, I went to Nation Centre and left some letters with them, but I have a few here and I have given some to the statement takers.

Mr. Tom Chavangi: Thank you very much, Mr. Kago. Were you forced to resign or were you really willing to resign? When you go through your statement, it seems as if

you voluntarily resigned. But the way you are talking, it seems as if you were compelled to resign.

Mr. James Waweru Kago: No, I was not compelled to resign. I just accepted. I knew my work was service. You cannot serve when you have such a huge never healing wound. A client would never accept my food. They could not even eat it. They would lose appetite and I had not done any other work. I thought it was better that I be paid for the time I had worked, so that my family could benefit.

Mr. Tom Chavangi: Thank you very much, Mr. Kago. You are a very generous person who understands how people live. How many children do you have now?

Mr. James Waweru Kago: I have four children.

Mr. Tom Chavangi: What are they doing in life?

Mr. James Kago Waweru: They are unemployed. I have one daughter who studied a diploma in human rights. I have another one who has finished Form Four and I cannot afford Ksh20, 000 for them to get their certificates, so that they can look for work. I have another in Form Two. They are all girls. The one in Form Two is at home because she has been sent home for fees balance of Kshs5, 000, which I am still looking for, as I hustle around.

Mr. Tom Chavangi: Mr. Kago, I am really sorry for that. There are politicians who really claim that they are hustlers. I hope you know them.

Mr. James Kago Waweru: It is true but my work is that I sell charcoal. When I received your phone call, I was in Kisumu. Somebody was trying to teach me the business of bringing here fish from Kisumu. So, when I was called on Friday, I came here.

Mr. Tom Chavangi: Thank you very much. My last question is with regard to this police squad that attacked you in Githunguri. Were they the Administration Police, the regular police or the General Service Unit (GSU)?

Mr. James Kago Waweru: These were the GSU, yet there was nobody fighting; but we heard that two schools, Gitwe and Githiga, and some businesses had come to a standstill. Buses were attacked. So, they came from the upper side of Githunguri with instructions to shoot to kill. One person who was trying to get nappier grass for his cattle was shot in the stomach. He is still surviving. There is another who was in hospital like me and he was also called Kago like me. He was shot in Kiambu, and, unfortunately, he passed away. So, they had been instructed to go to Kikuyu land and just shoot to kill. So, it was the GSU who came in.

Mr. Tom Chavangi: Thank you. I have no more questions for the witness.

The Presiding Chair (Commissioner Ojienda): Thank you, Mr. Kago, for your testimony. Your experience on 7th July 1990 was very painful and has left you with scars that have not healed to date. You are clearly one person who has seen it all and we empathize with what you have gone through and what you are still going through out of what happened to you in 1990. Yes Commissioner Farah.

Commissioner Farah: Mr. Kago, we empathize with your situation and the manner in which you were shot at by the police on 7th July 1990. My first question is: What were you working as at Hotel Intercontinental?

Mr. James Kago Waweru: I was doing room service. That was serving food. Somebody would ring from the room and then you receive the call and then they order food. I would order the food or drinks and then take it to the room.

Commissioner Farah: Did you use to work at night or during the day?

Mr. Waweru Kago: At times, I used to work during the day and at times during the evening shift, because room service is a-24 hour job. So, we used to work on a shift basis.

Commissioner Farah: On the fateful day, at what time were you going to work?

Mr. James Kago Waweru I was going to work at 7.00 a.m.; when I would be in the morning shift, I would leave my house at 5.00 a.m., by matatu, so that I would get to Nairobi by 6.00 a.m. I had many privileges at work. I would shower there and change into my uniform and clock in my card at 7.00 a.m., and start work.

Commissioner Farah: On the day you were shot, there was confusion and you were taken to hospital. Did your relatives report to a police station? Was the matter entered into an Occurrence Book (OB)?

Mr. James Waweru Kago: On that day, nobody reported to the police because they were not listening to anybody. They were just all over the roads in Githunguri.

Commissioner Farah: In your statement, you have said that your file was in Dr. Khaminwa's office. He is a very senior lawyer. How come the file got lost?

Mr. James Kago Waweru: That is the same question that I asked myself. My case was given to somebody called Waiganjo who was a lawyer with Khaminwa. Waiganjo was sent to Mombasa, and I am told he died there. When I was at home, I was rung from the lawyer's office and I found my file on the table, but I did not see Khaminwa himself. I saw one of the employees who looked like his child. They asked me who was paying for my case and I told them it was under the human rights by someone called Muhoji. He wrote and closed the file saying they would get back to me. But I have not heard from them since then. Whenever I asked, I am told that the file has not been found until I got tired and that is when I went to the TJRC.

Commissioner Farah: I have no further questions.

Commissioner Dinka: Thank you for your testimony and we sincerely empathize with your suffering. How old were you when you were shot at?

Mr. James Kago Waweru: I never went to school because my father had many children but I got a job through my sister who has since passed away. She was working at the Intercontinental Hotel in 15th May 1979, but I do not remember how old I was. I got my ID at the Inter-Continental but maybe I was 16 years old.

Commissioner Dinka: I thought you were very young and to go through that kind of suffering and pain at that age is a terrible thing that can happen to a young man. You said in your statement that the Government had said that the victims of Saba Saba cannot bring any suit against any agency of the Government. Is that a written circular or was it an Act of Parliament?

Mr. James Kago Waweru: It was not! It was just announced by the leaders at that time.

Commissioner Dinka: So, it was announced by some Government agency in the media and so the file exists.

Mr. James Kago Waweru: I know they are there because it was written and we heard over the radio.

Commissioner Dinka: The day you were shot, 7th July, 1990, what was the situation like in Githunguri? Was it calm? Were people rioting or demonstrating?

Mr. James Kago Waweru: That day was a normal day and the citizens were calm but when policemen came to Githunguri, they started shooting indiscriminately at people. It was just a day that had started off as normal because so many people were on their way to work, but there were no vehicles.

Commissioner Dinka: The police just came in and started shooting at people?

Mr. James Kago Waweru: There were no demonstrations at all because even in our area, people had gone to the market as a normal day but when the police came, it all started.

Commissioner Dinka: Was it regular police, the GSU or the AP?

Mr. James Kago Waweru: Some were regular police and some had red berets but I am not so sure whether they were GSU or the regular police. I saw them and when I got up after I had been shot, I could not talk. But I heard someone say that they had shot someone who had managed to get up. When I heard that because there was a lot of blood flowing, I pointed to them and told them to finish me by shooting me in the back and I walked on towards the hospital. So, they were interested in shooting to kill.

Commissioner Dinka: You were in the Aga Khan Hospital for one year and your bill was paid by your insurance company?

Mr. James Kago Waweru: Yes, one year and a half and another one year and half in and out of hospital because this thing was not healing. There was a big gap like somebody with two mouths because if I put water in the mouth, it would pour out through the other side. So, I was given straws by the doctors that would be pulled out and inserted close to the throat. I was in a lot of pain.

Commissioner Dinka: When was the last time you went to your lawyer's office and he told you that the file was not available?

Mr. James Kago Waweru: I have a name for the secretary that I speak to whenever I call that lawyer. Sometimes, she tells me he is in court and another time that the file has not been found and such issues. Our place is far and coming to Nairobi is hard. I have called severally.

Commissioner Dinka: And do you go back to the human rights group who sent you to him in the first place and report to them your difficulties?

Mr. James Kago Waweru: I went back about three times and Muhoji told me that they gave me a lawyer and I should follow the lawyer. So, when I usually go to the lawyer, I have not seen the Waiganjo. I have never found him in the office any day that I go there.

Commissioner Dinka: Would I be correct if I understood now that neither the human rights group nor the lawyer has done anything for you either go to court or did anything since 1990?

Mr. James Kago Waweru: I think they never went to court at all because if they had done so, this lawyer would not have summoned me from home to come and see them and ask questions about who is paying for this.

Commissioner Dinka: What do you expect from this hearing and this Commission?

Mr. James Kago Waweru: If you could help me to pursue this so that even if I get compensation from the Government, it will be good.

Commissioner Dinka: I would like to express my empathy again for your suffering and thank you very much for coming.

The Acting Chair (Commissioner Namachanja): Thank you for sharing your story and the pictures we have seen; a handsome young man deformed in such an unfortunate way. I know that Saba Saba was championed by some of our politicians and I wonder if any of them comes from Githunguri.

Mr. James Waweru Kago: At that time in 1990, there was an MP called Magugu and when he heard that people had been shot in Githunguri, he took no action. He heard that I was in hospital but he took no action. The person who took action in the Government at that time was the MP for Juja, Mr. Ndicho. The other one from Saba Saba who mentioned my name and took it to Vatican was Wamugunda. He wrote an article in *The Nation* from what he had experienced at that time and my name was there.

The Acting Chair (Commissioner Namachanja): Thank you and sorry for what you went through.

Commissioner Chawatama: Thank you for your testimony and I am really sorry for the experience that you went through, but I am also very happy that I am part of a team that is hearing your experiences today, and that we are able to afford you a platform to speak not only to us, but to many Kenyans through this Commission. Commissioner Dinka had asked how old you were when you started work and I think, approximately, the conclusion was that you were probably 15 years old. Do you know what the retirement age would have been for you as an employee of the Intercontinental Hotel?

Mr. James Kago Waweru: I do not know! We were led by a union and it was never straightforward. I was not so sure at what age somebody was meant to retire. I was given everything that was mine although my days had not reached; everything that had been kept for me was given to me. The Intercontinental Hotel gave me a lot of money because I had not worked for like two years. I was not bothered because they were very helpful to me.

Commissioner Chawatama: You informed us that you went to the dispensary where you could not be attended to since there were no drugs available. Was this a common thing?

Mr. James Kago Waweru: By the time I was shot, I took myself to Githunguri Dispensary but there were many problems there. There were no doctors and I was put on a delivery table. A lady called Mrs. Gitau came with something to wipe the blood and because of the chaos, she ran out to look for a vehicle to take me to hospital. I was not even bandaged and the way I had tied myself is the way I went to Aga Khan Hospital.

Commissioner Chawatama: I did not understand where the file that you mentioned got lost. Was it in the lawyer's office?

Mr. James Kago Waweru: I do not think it is lost; I know it is still in that office but those who want to look for the file want money. The file is there but I told them that everything for me is sponsored by the human rights but every time they tell me to go home and they will summon me. Every time I call the lady, she tells me that the file has not been found.

Commissioner Chawatama: So the place where the file is allegedly being sought is the lawyer's office?

Mr. James Kago Waweru: Yes!

Commissioner Chawatama: Is the file in the court system?

Mr. James Kago Waweru: I have never been summoned to court. I was only summoned once to the lawyer's office.

Commissioner Chawatama: So you have not appeared before a magistrate?

Mr. James Kago Waweru: Never!

Commissioner Chawatama: As we have gone all over the country, one of the issues that has often cropped up is the issue of access to justice. From your testimony, it seems that failure to go to court was because of your lawyer and not because of the court system. Is that correct?

Mr. James Kago Waweru: That can be true because I was given a lawyer by the human rights people. I did not look for the lawyer and after I tried to follow up the lawyer who had taken up the case - he was called Waiganjo - I was told he had passed away. I do not think anything ever found its way to the court.

Commissioner Chawatama: I think this is something we can follow up and see if we can trace the file.

Mr. Tom Chavangi: Most obliged!

The Presiding Chair (Commissioner Ojienda): Thank you for your testimony. As a lawyer, I am aware and know that lawyers often do a good job. Senior lawyers like Dr. Khaminwa can do a better job and I am sure that your file must be somewhere and that it can be traced. Your case can be followed up to finality. I will also find out from Mr. Muhonji because we know him. Certainly, if your file is in the court system, it will be expeditiously heard. You are aware that many victims of violation of human rights recently had their day in court; a successful day in court and it will come to you as well. We will do our part on our Commission by making recommendations in line with the statements. Thank you!

Let us have the next witness!

Mr. Tom Chavangi: The next witness is Mr. Joseph Kahuho Kahundi

(Mr. Joseph Kahuho Kahundi took the oath)

Welcome to the Commission!

Mr. Joseph Kahuho: Thank you! I live in Uplands, Kijabe Location.

Mr. Tom Chavangi: There is a statement that you gave with regard to your brother, the late Bernard Ng'ang'a Kahumbi who was killed. What do you understand to have happened to your brother?

Mr. Joseph Kahuhu: It was in 1952 when I moved to Kitale as a farmer. One day, I left home where I live in Wamuini Farm about three kilometers to Kitale Town.

Mr. Tom Chavangi: The reason for your invitation is to tell the Commission what led to your brother's death.

Mr. Joseph Kahuhu: When I was going to work in Kitale, I bought a newspaper and the first picture was of my brother in May 1995. I am very sad because I was his elder brother. When I saw the picture, I came to Kijabe. I have two other brothers who saw the newspaper.

(The witness whispers)

Mr. Tom Chavangi: Sorry! He has memory loss and his daughter is here and she can sit with him to assist him.

Commissioner Chawatama: Leader of evidence, you can also help by leading based on the statement but if his daughter is here, then she can fill in the gaps. Have you established how long he has had this condition of memory loss? What I thought I heard him say was that he could not see. So, maybe, he could not see the document to tell us the date. Has he indicated to you that he has memory loss?

Mr. Tom Chavangi: That is what the daughter has told us.

Commissioner Chawatama: Okay, let the daughter be sworn in.

(Ms. Grace Wahu Ng'ang'a took the oath)

Mr. Tom Chavangi: Who are you to the witness?

Ms. Grace Wahu Ng'ang'a: I am the daughter of the late Ng'ang'a Kahumbi and Mr. Joseph Kahumbi is my uncle. There are things that he might remember that he witnessed because we were all very young. This is a person I know very well.

Mr. Tom Chavangi: Would like him to continue presenting the statement and you fill in the gaps?

Ms. Grace Wahu Ng'ang'a: Yes, because we recorded the statement together.

Mr. Tom Chavangi: Mr. Kahumbi, please continue. When you were in Kitale and you got a newspaper with the photograph of your younger brother, what happened?

Mr. Joseph Kahuho: I went home and heard that the body was in Nairobi Hospital and we had to prepare for the burial, which we did. After the burial, I did nothing. I took the newspaper and went back to Kitale – I still have it here with me - but later went back to Nairobi and I saw another paper by Gatabaki and I bought it for Kshs50. From that time, I went back to Kitale but I used to come home to visit them. The children continued growing and at some point, I spoke with them but the widow had become weak physically and later died leaving her children. When I saw that there was another Government, I thought this issue would be taken up. So, when I went to Kimende, I saw the TJRC and that is when I saw they had an office. I took to them this newspaper and they saw it and they asked me who I was and I told them who I was. This is the second time I was summoned to Limuru.

Mr. Tom Chavangi: Before you tell us about the TJRC offices, did you find out who murdered your brother?

Mr. Joseph Kahuho: In my opinion, during the Moi's Government, there was a close friend to my brother called Mwangi - we called him and I do not know whether he is here - and he is the one who told me that their lives were in danger. I was very sad because I knew that he was killed by the Government at that time.

Mr. Tom Chavangi: Did he tell you that Bernard's life was in danger?

Mr. Joseph Kahuho: Yes, he said that to me!

Mr. Tom Chavangi: Was it by phone or did you meet?

Mr. Joseph Kahuho: We met and he told me that.

Mr. Tom Chavangi: Where did you meet?

Mr. Joseph Kahuho: Here in Nairobi.

Mr. Tom Chavangi: Was it his house, yours or in a restaurant?

Mr. Joseph Kahuho: We were having a cup of tea in Karai.

Mr. Tom Chavangi: When your brother Bernard disappeared, did you hear of it? Did you also say that you got some information from a newspaper you bought in Kitale? Where was the body of your brother? Was it in the mortuary?

Mr. Joseph Kahuho: I did not do a lot because I was very sad. But when I was in Kitale, I saw his vehicle in the newspaper. It had been written that somebody's body inside a vehicle had been found at Limuru Flyover. He told me one day that he wanted to come to Nairobi to pursue his business. So, I saw that it was him at the flyover in Limuru.

Mr. Tom Chavangi: You saw his vehicle in the newspaper?

Mr. Joseph Kahuho: Yes, I saw his vehicle in the newspaper.

Mr. Tom Chavangi: And you knew his vehicle?

Mr. Joseph Kahuho: Yes, I knew that was his vehicle.

Mr. Tom Chavangi: You said that you decided to travel to Nairobi. Where was the body of the late? Was it in the mortuary or the hospital?

Mr. Joseph Kahuho: It was at Nairobi Hospital.

Mr. Tom Chavangi: Is it Kenyatta National Hospital or Nairobi Hospital or the mortuary?

Mr. Joseph Kahuho: It was at the City Mortuary.

Mr. Tom Chavangi: Did you have a chance to view the body?

Mr. Joseph Kahuho: Yes. I identified the body.

Mr. Tom Chavangi: What did the body look like? What kind of wounds did it have?

Mr. Joseph Kahuho: It had bullet wounds.

Mr. Tom Chavangi: What part of the body had wounds?

Mr. Joseph Kahuho: Around the chest. There were many bullet wounds on the chest.

Mr. Tom Chavangi: Had the bullets completely shattered the body?

Mr. Joseph Kahuho: Yes. The body had started rotting. He did not even have teeth at all, at that time.

Mr. Tom Chavangi: You are saying that you know very well that it is the former Government that did this?

Mr. Joseph Kahuho: Yes.

Mr. Tom Chavangi: Up to now, have you received any information that would give a hint as to what led to him being killed? Do you have any information to share with the Commission?

Mr. Joseph Kahuho: There was something that was going in the Government at that time. People were stabbing others in the back and there was a lot of tribalism. My brother

was being told to go and kill this person. His name is Gatabaki. In the newspaper, I read that my brother refused--- The information that I have is that Gatabaki is a Kikuyu and he used to write the truth in his newspaper.

Mr. Tom Chavangi: What was happening in Kenya at that time?

Mr. Joseph Kahuho: It is not just my brother who was a victim at that time. There were very many other victims.

Mr. Tom Chavangi: What exactly may have led to somebody wanting to kill your brother who was just doing his work as a policeman?

Mr. Joseph Kahuho: Late Bernard had a high position in the police force. His senior was called arap Too. He was from the other side. The other one was a Kalenjin. This one was a Kikuyu. There was infighting at that time. At that time, something was not going very well with the Government regarding the Kikuyu people.

Mr. Tom Chavangi: So, you might think it was because of ethnic hatred within the police force?

Mr. Joseph Kahuho: Yes.

Mr. Tom Chavangi: Ms. Grace, would you like to add on to that?

Ms. Grace Wahu Ng'ang'a: Yes, I am grateful that my uncle has been able to speak. What I can say is that I read that information in the Finance Magazine that was published by Mr. Gatabaki. There was a lot that had been said about that incident in that magazine. I do hope that we will give you a copy. When my father was a senior superintendent in the Special Branch, his senior was called arap Too. There was no freedom of expression. Mr. Gatabaki was bold enough to write about the truth of what was happening within the Government. It is the senior members of the CID who were sent to kill him. My father had been sent to go and kill Gatabaki, but he respected human life as a Christian. I believe that that is what led to...

(Ms. Ng'ang'a broke down and wept)

The Presiding Chair (Commissioner Ojienda): Leader of Evidence let her compose herself. I think she is referring to the material that we have. We have the information. Allow her to compose herself.

Commissioner Chawatama: Ms. Grace, we are so grateful that you are here with us this morning. It is always good to hear from the immediate family of a victim who has suffered a human rights violation. We know that you were a child at the time and that you have relied on information from your uncle and that you have also relied on information that was in the newspaper. I am glad that you have been able to come and to speak to us because we have given you this opportunity and hopefully, at the end of this process,

there may be some closure on your part and you might be able to understand what really happened; why it happened and, hopefully, that it will never happen again. Thank you.

Mr. Tom Chavangi: Ms. Grace, had you finished your contribution?

Ms. Grace Wahu Ng'ang'a: I am sorry about that. As I conclude, I would say that it was because he did not do what he had been ordered to do that he lost his life.

Commissioner Chawatama: I thank you both for your testimony. I would like to find out from Ms. Grace what she remembers about her father as a child growing up.

Ms. Grace Wahu Ng'ang'a: I remember a lot. I admired my dad. Above all, he was a God-fearing man. I would also say that he loved his job and his family. He was also a faithful servant to the Government.

Commissioner Chawatama: Apart from the things that you have said about your father, how would you want him to be remembered? If you were given an opportunity to suggest how you would like your dad to be remembered, what do you think should be done?

Ms. Grace Wahu Ng'ang'a: Usually in our country we have heroes and I believe my dad was a hero. He was a hero to us, our community and even to the nation. I would recommend that he should be accorded the kind of recognition given to heroes because it was not only a loss to the Government, but also to the community.

Commissioner Chawatama: We were sadly informed that you also lost your mother. Do you know whether or not the death of your mother was a result of your father's death?

Ms. Grace Wahu Ng'ang'a: By the time my dad passed on, both of them were suffering from diabetes. It was not in a very advanced stage. But immediately my dad passed on, I was in Form Four at that time, his condition deteriorated. It was in May and we were reporting back to school in 1985. We were sitting in the kitchen when people came in a vehicle with GK registration number plates and informed us that my father had passed away. I remember that was the time my mother developed high blood pressure which affected her health and eventually caused her death in 2006.

Commissioner Chawatama: Leader of Evidence, I do not recall that we have a postmortem report.

Mr. Tom Chavangi: We do not have it.

Commissioner Chawatama: Ms. Grace, do you know whether or not a postmortem was conducted to establish officially the cause of death of your dad?

Ms. Grace Wahu Ng'ang'a: When my mother was alive she had a lot of responsibilities such as educating us and catering for our other needs. I do not remember whether it is there in the documents that I have, but I know where they are and I can look for them. I

know the postmortem was done at City Mortuary. Maybe we can be assisted to get it. I know we have the death certificate, but the person who has it in his custody was not able to submit it today. That is all I can say.

Commissioner Chawatama: From what has been said today and what I have read the blame seems to be on the police that it was the police that took your father's life. I do not know if you have been following the proposed police reforms that are taking place in Kenya. I do not know if you have any thoughts on this, on the kind of police service that you would like to see based on the experience that you have gone through.

Ms. Grace Wahu Ng'ang'a: On the changes that are taking place in the police force, I have been able to follow them. I am also involved in civic education. I am a social worker, but I usually volunteer to do so. I try to educate people on the reforms that are taking place. The fact of the matter is that the policeman who was there is not around now, I will not get a lot of help. Also you find that the policemen do those things out of pressure and a lot of bad things that they experience in their line of work. So, probably, that is the reason they behave the way they do. So, I still feel that there is a lot that needs to be done.

Commissioner Chawatama: Looking at the statement that was prepared as you said by your uncle and yourself, one of the things that you seek is compensation, counseling, investigations and possible prosecution. Do you have anything else that you wish to add to these recommendations?

Ms. Grace Wahu Ng'ang'a: As at now, I do not have anything to add. I would only like to insist that we stand by that. When my dad died the vision that he had for his family went suddenly. So, if we got compensation we would be able to achieve our goals and, probably, our lives would be better. I recommended counseling because I have seen what is going on.

(Ms. Ng'ang'a broke down and wept)

Commissioner Chawatama: We will not put you under any more pressure to speak. I would just like to assure you that we, as a Commission, were ready for your testimony. We were ready to hear exactly what you and your uncle have said to us. We were prepared for the fact that there will be tears because you would have to relive a very painful experience. I am so sorry that the questions I have asked you have caused you to remember so much and to break down. We, as a Commission, have been tasked with coming up with recommendations which will help people such as yourself and your family, so that our recommendations will help in ensuring that what happened to you does not happen again. Causing you pain was not intentional. However, as you have said, something must be accomplished that will help you bring closure to this very painful incident that took place. Thank you, for your courage. I also thank your uncle for his courage. No more questions.

Commissioner Dinka: Thank you Mr. Kahumbi and Ms. Grace for your testimony. You have assisted us in understanding some of the issues involved in the death of your brother and father. I do not want to subject you to this thing much longer. However, for me to be able to work properly within the Commission on this particular issue and others like this, I need to be very clear in my mind. First of all, I am not from Kenya. So, you can understand I have more difficulty than my Kenyan colleagues who understand these issues. Looking at your statement and the documents that you have given us, I note that there is one *Daily Nation* report which mentioned about the murdered officer's incident of 20th May, 1995. That is one *Daily Nation* article. The rest which talks about the story all comes from the paper called *Finance* which was edited and published by hon. Gatabaki who used to be a Member of Parliament at that time. In the first page of the special issue of *Finance Magazine*, it is asking Mr. Gatabaki whether he wanted to respond to the allegation that Mr. Gatabaki was actually responsible for the death of the superintendent. The following articles take from that question and there are all the responses of Mr. Gatabaki saying that actually this man was killed, not by me, but because he refused to kill me. He goes on and mentions people's names and so on. What I would like to find out from you is Mr. Gatabaki alive?

Ms. Grace Wahu Ng'anga': Mr. Gatabaki is alive. Last year, I invited him to a forum.

Commissioner Dinka: So, we could go back to Mr. Gatabaki about the allegations that have been made and maybe he might have some sources. Do you have any other documentation - in addition to *the Finance Magazine* which is owned by Mr. Gatabaki who was himself a suspect - that would indicate or at least point the direction to some area about how your father was killed or who killed him and why? Is there any other piece of documentation in addition to *the Finance Magazine*?

Ms. Grace Wahu Ng'ang'a: For now we only have that, but I remember when I went back to school in our class we used to read newspapers so much. So, whenever the newspaper would be brought to class and it had an article on my father I would not be able to get a chance to read and ask about the information that came out in the newspaper. So, if we could go back to the archives maybe we could find some more information that was written. So, other than *the Finance Magazine* and *the Daily Nation*, we do not have anything else to show what happened at that time.

Commissioner Dinka: I empathize very much with your suffering. I can understand the loss of a brother and a father. It is a very serious and tragic loss. In fact, the manner in which your father who was a superintendent of police died is an added tragedy. I think what we can do through the Chair, I would like to, perhaps, ask the Leader of Evidence if we could get in touch with Mr. Gatabaki and find out from him if he could lead us with some tangible evidence, not only allegations that he made in these papers of his which he published and edited.

Secondly, if the police could be requested, this man being a very senior police officer, they must have done a lot of investigations and even the postmortem report that they should give us some documents that would help us understand this issue much better. I

think we could, perhaps, approach them. In the new Constitution there is the right to information. These are the conundrums that I think we should really decipher. Again, I would like to present my sympathy and sorrow. I shared your pain and suffering. Thank you very much for coming.

Commissioner Farah: Ms. Grace Ng'ang'a and Joseph Kahumbi, I also empathize about the death of your father and brother. Just to add to what fellow Commissioner said, I have only one question for Mr. Kahumbi. However, in case his memory is not very good then you can help him. Before the death of your father, I think it is stated in the statement here that your uncle went to your father after they heard rumours from a colleague of his, Inspector Mwangi that the life of your father was in danger. He heard the rumours that he was instructed by arap Too to go and kill Gatabaki, but because he was a Christian he refused. When he refused his life was in danger. At that time - I am reading from the statement - that your father was working in Kisumu and the office he went to was in Kisumu. Was it at the time he was in Kisumu that he was told to go and kill Gatabaki or was it before that when he was working in Nairobi?

Immediately he told his brother, "let me first go to Nairobi and take care of some of my business and then after that I will discuss with my wife about running away to Uganda", later on, the body was found on the flyover. Could you, please, also confirm that it is during that trip as he was coming to Nairobi that he was waylaid on the way and killed? Had he already arrived home and had he been to the village and after staying for a while on his way back to Kisumu that is when he was shot? If you could clarify those two issues.

Ms. Grace Wahu Ng'ang'a: Usually, if he went anywhere he would not take a long time. I remember there was a time when he went to Nairobi and then Kisumu. When he was in Kisumu I remember very well I was in Form Four and my younger sister was in Form One. We were in the same school. I remember if he said he was coming to take care of business in Nairobi, he was coming to shop for us to report back to school. So, when we got the information at home, we were sleeping waiting for him that evening, so that he could take us back to school because usually he was the one who used to pick us and take us to school. I remember the shopping that he had done. The items that we needed to go back to school. The ones that were brought home, some were stained with blood. When he got to Nairobi, he was tortured and put back in his vehicle and then dumped at the flyover going to Nakuru in Ng'arariga. He arrived in Nairobi, shopped and was coming home to take us back to school.

Commissioner Farah: That was so clear. I have no further questions.

The Presiding Chair (Commissioner Ojienda): Thank you very much for your testimony. I think that as my colleagues have said this is a matter for further investigation in so far as certain aspects are concerned. However, we will make recommendations in line with the mandate that we have. I empathize with the family, especially for what you have gone through over the years.

Leader of Evidence let us have the next witness.

Mr. Tom Chavangi: Commissioners, the next witness is No.5, Joseph Macharia.

Commissioner Ojienda: Leader of Evidence, as I went through the testimony of Joseph Macharia specifically on the allegations that the land at the Dandora dumpsite belonged to this group, I have not seen any supporting documents. I hope he has the title deeds or the allotment letter.

(Mr. Joseph Macharia Maina took the oath)

Mr. Tom Chavangi: For the purpose of the Commission's record, could you state your name again?

Mr. Joseph Macharia Maina: My name is Joseph Macharia Maina. I live in Dandora.

Mr. Tom Chavangi: Which part of Dandora?

Mr. Joseph Macharia Maina: In Dandora Phase II. It is known as Area Six. I have lived there since 1958.

Mr. Tom Chavangi: You presented yourself before this Commission to speak on issues of the squatters.

Mr. Joseph Macharia Maina: I will give a short history. I was born in 1942 in Shauri Moyo in House No.119. I grew up there. My parents were freedom fighters.

Mr. Tom Chavangi: We shall have a session where we shall discuss your life. Kindly speak on issues affecting the squatters. Could you just go directly to the matter, so that we understand why you are before this Commission?

Mr. Joseph Macharia Maina: Pardon me. From 1958, I went to live in Dandora. At that time the area was known as Quarry Limited. The settler who lived there was called Margaretis. Her manager was an Asian who was known as Khan. This white person left Dandora in 1971 and left the manager behind. In 1974, the Asian also closed shop and left the workers who had been working there from the 1930s and 1940s and they did not even know where their rural homes were. These are the people who live there up to date.

I would like to tell the Commission that from 1974 the World Bank came to the village that was known as Quarry with the City Council. They registered us and said that they wanted to construct houses for us to live in.

In 1976, the Government gave a directive that people who live in slums, for example, in Nairobi, especially those who lived in Kanyago Eastleigh should be transported in lorries to Dandora and they were brought together with the Quarry residents. When we were

brought together with them, they were told that they would be allocated land there and we agreed.

The Nairobi Town Clerk then, Mr. Mbugua, whose letter I have with me here, wrote to us as the Quarry Limited residents, allowing us a passage for the sewerage. The land was surveyed and sub-divided, but the area that belonged to Quarry Limited where we had our houses which we had constructed using mud and iron sheets was not surveyed. They only surveyed a small portion of it. They named it phases; one, two, three, four as well as phase five. Phase six was not touched and that was where we had our homes. We were waiting so that when they build our houses they move us, something they never did. We found that to have been a mistake because we were the ones who had summoned the project and we had our houses in area 86 and blocks 1056, 1057, 1058, and 1059. That was where the Quarry Limited former residents had built houses as well as at Kanyago slums. This was because we were brought together in 1976 and since then we have suffered a lot.

Those of us who were in the four blocks; 1056, 1057, 1058 and 1059 were thrown out after having been dubbed that the houses which were being constructed were for us. All of us were put together in area 86 and we later found that new people; wealth people, were brought in. These people took over the four blocks and even the police block that was situated between the blocks -I have documents here showing that. It indicates that the police line was taken and they went on and even followed us to the new place where we were living. They started beating us up using the *Kamjesh* who were led by the DO of the day. If you want me to mention names I can. They could buy them illegal brews, *chang'aa*, and they would beat us throughout the night. Where we moved out, the land could be sold off; that continued and we were thrown out of the area in 1986.

That was in 1989, when we suffered. Three people were murdered through shooting and one of them, Mr. Joseph Kamau, did not die. He was admitted in Kenyatta Hospital for approximately one and a half years. There was also a lady by the name Mary Wairimu who was arrested for about one and a half years because she was a women's leader. In short, in 2002, we held a demonstration to the PC's office, Mr. Cyrus Maina. We were approximately 300 people and we continued going there for many days. We would meet the PC as well as the City Council officials. We have even gone to the Ministry of Local Government, Sheria House, and we have been everywhere. Other places where we wrote letters they replied and for others there were no replies. When it came to June, 2002, the PC Cyrus Maina summoned me as Joseph Macharia Maina. When I went there, I found him with the PPO Nairobi, the AP Commandant and the DO whose name was Cheruiyot. I have mentioned his name because I love him up to date because he is the person I found to be sensitive to poor people's needs. When he saw the condition in which we were living in he was moved to tears.

We called a security meeting where I was involved, and wanted to see how we would chase away the grabbers who had grabbed our land. I was asked by the PC if I could find some money to hire a tractor and to pay the youth who could assist us. I told them that I

would try as much as I could. After two weeks, I sat Mary Wairimu down; we borrowed some money which was more than Kshs700, 000 to demolish the houses.

Mr. Tom Chavangi: *Mzee* Joseph, just to direct you. Where are they living now?

Mr. Joseph Macharia Maina: I will answer that because that is where I am headed. We live along Nairobi River and that is a place where trees are supposed to be planted; along the riverbank. We have built small shacks and that is where we live.

Mr. Tom Chavangi: Joseph, there is another question which I also want to ask so that the Commission can get directions. You have mentioned four blocks; 1056, 1057, 1058 and 1059. You have said that you are the original owners of this land. Do you have the title to this land?

Mr. Joseph Macharia Maina: The title deed was surrendered to the Colonial Government and we were left without a title deed. What we have is a map that was drawn by the Dandora Community and which was used by the World Bank.

Mr. Tom Chavangi: Besides the title deed which you do not have, do you have any document like the allotment letters?

Mr. Joseph Macharia Maina: No. We could have not been given allotment letters because subdivisions had not been done. Even the original map indicates that and I will hand it to you.

Mr. Tom Chavangi: Commissioners, I seek your direction on this.

Mr. Joseph Macharia Maina: That has since changed and it keeps changing, land is grabbed and it is changed into a dumping site full of garbage up to our doors. We live under sewage lines! I would like you to visit that place to see where we live. We live in very inhumane conditions.

The Presiding Chair (Commissioner Ojienda): Mr. Macharia, thank you very much for your testimony. I just want to direct that the leader of evidence steps you down, but before I do that, just let me understand the basis of your claiming to have been the original settlers on Phase 6. What will make us as a Commission believe that besides what you are saying?

Mr. Joseph Macharia Maina: It is not just Phase 6, we are the original settlers. We are the original people; our parents and our ancestors are buried there and I can show that evidence on the ground. Some of those who are left cannot even walk; very few of them who were registered in 1930s live there with us.

Mr. Tom Chavangi: Do you have any documentation that would help this Commission understand what you are saying? Is there a list of families?

Mr. Joseph Macharia Maina: Yes. That is available.

Mr. Tom Chavangi: An official record of Government with a list of about 225 members--- Who compiled the list of shareholders of Quarry Limited?

Mr. Joseph Macharia Maina: That was the original list, we have not included our children's list and we keep up dating it.

Mr. Tom Chavangi: You said that this land was owned by Quarry Limited.

Mr. Joseph Macharia Maina: Yes. That is what I said; it belonged to a Greek settler.

Mr. Tom Chavangi: Is it the Greek settler who transferred it to you?

Mr. Joseph Macharia Maina: I would also like to ask a question, just as you have asked. If you are born in a place where your parents were also born and you do not know any other place, and the settler who had employed you left you there, where else would you go? Is that not your land? After the settler surrendered the land and left, he surrendered us also and we became settlers on the Government land. Just as he handed over the land to the Government, in the same way we also became the property of the Government. We have to fight for our rights because we do not have anywhere else to go and we do not have any other land because we do not know our original rural places.

Mr. Tom Chavangi: So, the land was handed back to the Government at independence?

Mr. Joseph Macharia Maina: Yes. It was handed back to the Government.

Mr. Tom Chavangi: Mr. Macharia, so there was no formal transfer of land...

Mr. Joseph Macharia Maina: Even the Government does not have the transfer documents. The land belonged to Quarry Limited which was making ballast there, keeping livestock as well as doing sisal farming.

Mr. Tom Chavangi: Are you sure that the 250 people appearing as share holders are people who were landless?

Mr. Joseph Macharia Maina: Even if you go to the ground, and even without involving me, no one will tell you where they came from originally; even the children who are now our children. I am now a great grandfather and none of my children know any other home.

Mr. Tom Chavangi: Do you own any land yourself?

Mr. Joseph Macharia Maina: I do not have even a place to be buried. We always take our children to Langata Cemetery when they die and I can even show you their graves.

Mr. Tom Chavangi: As IDPs you are people who have nowhere to live?

Mr. Joseph Macharia Maina: Just as Kenyatta begun to misbehave, that was the same thing that was carried on by Moi; this bad habit of harassing people. The villages are just as the white settlers left them.

Mr. Tom Chavangi: (Inaudible)

Mr. Joseph Macharia Maina: We just see the wealthy people coming and grabbing land. I have proof and I can take you there for you to see it for yourselves.

The Presiding Chair (Commissioner Ojienda): Mr. Macharia, your claim is that Quarry Limited was the original company which issued shares to members?

Mr. Joseph Macharia Maina: Yes. The shares were given to employees of Quarry Limited.

The Presiding Chair (Commissioner Ojienda): Was it the wish of your parents that you should be entitled to shares and, therefore, plots within that area that you settled?

Mr. Joseph Macharia Maina: We should have been the original settlers.

The Presiding Chair (Commissioner Ojienda): Commissioner Farah!

Commissioner Farah: No question, Presiding Chair.

The Presiding Chair (Commissioner Ojienda): Commissioner Chawatama!

Commissioner Chawatama: It is very difficult and very sad because I have tried to understand, especially in places where we have found the so-called squatters are all over the world...Commissioner Dinka is well travelled and I think if he were to be asked, he would tell us that squatters are all over the world and they enjoy certain rights.

I am trying to understand, what do you think a responsible Government should have done to assist these people?

Mr. Joseph Macharia Maina: We usually say that we do not have a government because if a person has lived in a place for over 70 years--- Others have died there and left their children on the land; the Government has then come in and found the village and, instead of giving it to its owners who have lived there, it is bringing in friends from outside. It brings its families from outside and allocates them this land---

Commissioner Chawatama: The area where you live is also a dumping site?

Mr. Joseph Macharia Maina: Yes.

Commissioner Chawatama: When did it become a dumping site?

Mr. Joseph Macharia Maina: We do not know. That is a story to us.

Commissioner Chawatama: You were not given any notice that people would start dumping rubbish at that place?

Mr. Joseph Macharia Maina: We had decided that the quarry sites be dumping sites so that they could be filled up. The filling up of the quarry sites started from Huruma. It continued but when it got to Dandora and when they saw the land and that we were poor, the games begun. I want to tell the Commission where the problem came from. I know that every Kenyan remembers that when the City Council was dissolved by Mudavadi Senior and a commission set up where Mwenje represented us, he brought in someone from their home called Mwangi Kamahoha who became a Commissioner. That was the time when it begun, we were never allowed to speak again. If anyone did, he could be thrown out. So, all we saw were our plots being allocated because they joined hands with the HTD director whose name was Malenya and the Town Clerk, Mr. Manderu and a Mrs. Mwangi. Those are the ones who were representing the Nairobi Sites. From that time and even as I speak, everywhere we go nobody listens to us. I see it as a miracle that I can get an opportunity to talk about it without being stopped by anybody.

Commissioner Chawatama: Thank you so much for coming to speak to us. We have heard a lot in this country about the plight of the poor people. We have heard a lot about the plight of squatters and we have heard how easy it is to take land from the poor. We are glad that you have had an opportunity to air your views and we have noted what you have said.

Thank you very much.

The Presiding Chair (Commissioner Ojienda): Thank you Commissioner Chawatama. Mr. Macharia, I have not let you off the hook. I am not going to let you off like that. There are a few clarifications I want you to make. The company called Quarry Limited appears in March 2009, when you altered the memorandum and the articles of association and appointed new shareholders and directors; you are described as a businessman in this document.

Mr. Joseph Macharia Maina: Yes.

The Presiding Chair (Commissioner Ojienda): And you have 250 shares of the company. If you can explain that, we would appreciate.

Mr. Joseph Macharia Maina: Yes, I can explain.

The Presiding Chair (Commissioner Ojienda): The impression given here is that you represent the poor. But you are described as businessman and you have 250 shares. There is also a surveyor called Philip Kea who has 1000 shares.

Mr. Joseph Macharia Maina: Yes, he has 1000 shares.

The Presiding Chair (Commissioner Ojienda): I want to understand the link between these new directors, who came in 31st March, 2009 and the poor shareholders whom you represent and whose names are given to us with no identification cards. Just explain that to us.

Mr. Joseph Macharia Maina: I can explain that. There are 250 shares, we could have 100 shares. Let me say that in my place and in my group, the people known as Quarry--- I will speak the truth in front of this Commission because I know you will also investigate and find out that I am speaking the truth.

There is only one person who does not belong to the group and who had stolen this company and disappeared with it completely. When we went to the registrar, we found that Philip Kea had stolen from the company. The registrar said that they are the ones who had taken over the company. So, I asked how they could carry people with themselves even without consulting us and he said that it was because we are poor. The case went on and it is not even concluded yet. It was said that he had spent a lot of money and Joseph Macharia Maina was given 250 shares which we would have shared with my squatters; whom we call slum dwellers comprising of Mr. Charles Marwa and his group. There was also a Mr. Mutisya who was given 100 shares; Ms. Mary Wairimu was also given 100 shares which she refused.

There is a letter which I would like to submit though I do not have it with me. But I will hand it to the Commissioner to show how that case is going on because the land belongs to Quarry. I am the first person and then Kanyago squatters are also poor alike and we have lived with them. So, this case of sub-dividing the shares is on-going.

We were not allocated the shares as my share; it was my group because there has been a lot of fighting in Quarry Limited. That is why I have asked if the land will be handed back. It will not be given back to Macharia, Charles or any other person, it will be handed over to the Government and that is even the request I have put forward to the Commission.

The Presiding Chair (Commissioner Ojienda): Mr. Macharia, certainly the parents of Mr. Philip Ndiaka Kea and Mr. Francis Osoro cannot be squatters. They are all described as businessmen. So, it is good if you explained; some of the directors are not squatters but you are a squatter yourself.

Mr. Joseph Macharia Maina: I will speak the truth. Mr. Francis Osoro, even right now if you go to his place you will be shocked to see how he is living. He has two wives and if you see the way they live--- They are educated people, I am not educated and I left school at Standard Three along time ago, in the 1950s. So, the lawyer who was taking care of the case when we were going to submit the memorandum--- There are people I

found out that they changed things and played around with them, but we are trying to correct that.

The Presiding Chair (Commissioner Ojienda): Just tell me about the surveyor, Mr. Philip Ndiaka Kea, who owns 1000 shares.

Mr. Joseph Macharia Maina: He was the first person to grab the land. We have a letter to that effect.

The Presiding Chair (Commissioner Ojienda): Some were using Quarry Limited--- He misused your company to grab land.

Mr. Joseph Macharia Maina: Yes. A lot of grabbing had happened under this name even in Njiru and Kasarani.

The Presiding Chair (Commissioner Ojienda): That explains why your members do not have identification cards or addresses. Do you have share certificates for members?

Mr. Joseph Macharia Maina: Yes. I have a file that has all the identification numbers and official names.

The Presiding Chair (Commissioner Ojienda): How about the certificates?

Mr. Joseph Macharia Maina: May be it has come out, but I am not sure, I can ask about that.

The Presiding Chair (Commissioner Ojienda): But Mr. Macharia, you are the chairman!

Mr. Joseph Macharia Maina: Yes. I am in Quarry and Kanyago areas.

The Presiding Chair (Commissioner Ojienda): Why is that no shares have been issued to members?

Mr. Joseph Macharia Maina: No, we have not had any meeting to give shares because we do not have the land.

The Presiding Chair (Commissioner Ojienda): I have no further questions. Thank you very much for your testimony. You have spoken to us; we will investigate and make recommendations. Have a good day.

Leader of evidence call another witness.

Mr. Tom Chavangi: Mr. Macharia, there are some documents, would you wish to produce them as evidence?

Mr. Joseph Macharia Maina: Yes, I would.

Mr. Tom Chavangi: Commissioners, our next is witness number seven; Stanley Ndegwa Kagere.

(Mr. Stanley Ndegwa Kagere took the Oath)

Mr. Tom Chavangi: Mr. Kagere, for the purposes of the Commission's records, would you like to repeat your names again?

Mr. Stanley Ndegwa Kagere: My names are Stanley Ndegwa Kagere.

Mr. Tom Chavangi: Mr. Stanley Ndegwa Kagere, where do you live?

Mr. Stanley Ndegwa Kagere: I live in Githurai.

Mr. Tom Chavangi: What do you do?

Mr. Stanley Ndegwa Kagere: I sell shoes and fruits at Ngara.

Mr. Tom Chavangi: You are the secretary of Mwarero Jua Kali Association?

Mr. Stanley Ndegwa Kagere: Yes, I am the secretary of the Mwarero Jua Kali Association.

Mr. Tom Chavangi: How many Members do you have?

Mr. Stanley Ndegwa Kagere: We have 1, 500 members.

Mr. Tom Chavangi: Are all of you running businesses at Ngara?

Mr. Stanley Ndegwa Kagere: Not all of us work at Ngara. Each one of us runs business in their own areas.

Mr. Tom Chavangi: You presented a statement to show how you were thrown out of the City Centre and taken outside the Central Business District (CBD) and later apparently you underwent injustice and the piece of land was allocated to another group. Would you like to tell the Commission exactly what happened?

Mr. Stanley Ndegwa Kagere: We were hawking in town and the Government came up with a policy of clearing hawkers from the CBD. It was said that all hawkers would be taken to areas outside the CBD. One of the affected markets was Mwarero Market. Other markets were to be put up in Kawangware and in Kayole. We were brought to Mwarero Market.

Mr. Tom Chavangi: Where is Mwarero Market?

Mr. Stanley Ndegwa Kagere: It is between a road that comes from Kariokor as you come towards town; it is called Racecourse Road going towards Kamukunji Police Station, at the corner. That is where Mwarero market is.

When we got to that parcel of land we started doing business of hawking and there are those who were selling clothes and others running restaurants and others dealing with metals. So we went on with our businesses and stayed on from 1998 up to about 2002 when we heard that the Mwarero Market was among those markets that the City Council had earmarked for constructing stalls for hawkers so that they could be more comfortable running their business.

We agreed with that because we thought it was a good move; instead of sitting on metals, they thought it would be better for the City Council to build something more decent for us. They went on saying that they would build a good market for us and we were not opposed to that and they went on and carried on with meetings.

In 2009, we saw a piece of wood that had been put there; a sign post showing that the tender had been allocated to people of Wema Foundation Trust to come and build the market. We wondered who these people known as Wema Foundation Trust were, because we did not know them. When we started investigating we were told that they had been given the contract by the City Council to build the market. We did not know where these Wema Foundation Trust people came from; therefore, we decided not to accept. First of all, we said that the City Council had to come and explain this to us as we could not just move out without being shown an alternative place. So, they had to come with a good policy in order for us to be moved from there and be placed in an alternative place where we could continue with our business so that after the construction is done, we could go back.

That did not happen instead they came at night and demolished the market and destroyed our property and all our work was destroyed. Some people were shot and others were injured and we were left with nothing.

Mr. Tom Chavangi: When you were left with nothing, is that when you dispersed and went all over to other parts of Nairobi?

Mr. Stanley Ndegwa Kagere: Yes. That is when we dispersed and went to all parts of Nairobi.

Mr. Tom Chavangi: Whom does the Mwarero plot belong to; does it belong to the City Council? Who has the ownership documents and the title deed? Is it you members 1, 500 members?

Mr. Stanley Ndegwa Kagere: Yes, it belongs to the City Council.

Mr. Tom Chavangi: So, it does not belong to you?

Mr. Stanley Ndegwa Kagere: It belongs to the City Council but we are the ones who have been working there.

Mr. Tom Chavangi: The reason for you coming to make up your presentation before this Commission is that, City Council and Wema Foundation Trust had visited an injustice upon you and you would like the City Council to give you a certain area where you can run your businesses.

When they took you out of the centre of town, did they promise that they would give you an alternative place to run your businesses?

Mr. Stanley Ndegwa Kagere: They are the ones who got us out of town. One thousand five hundred of us were taken to Mwarero from town.

Mr. Tom Chavangi: Were you promised that that would be your place of doing business?

Mr. Stanley Ndegwa Kagere: Yes. We were promised.

Mr. Tom Chavangi: Was there any written agreement between you and the City Council?

Mr. Stanley Ndegwa Kagere: No, we did not have any written document. But we were working with the Council office at Kariokor and the council was charging us. We were paying Kshs100 per week; Kshs50 on Tuesdays and Kshs50 on Thursdays. So, it was a City Council market and they were actually charging us that amount.

Mr. Tom Chavangi: What is there at the moment?

Mr. Stanley Ndegwa Kagere: There is nothing there at the moment. It is just surrounded by a corrugated iron sheet fence and it is empty. It appears like it was sold to somebody because the purpose of evicting us was to build a market. It seems like there is somebody who bought it and he is yet to start developing it.

Mr. Tom Chavangi: From your opinion, who was it sold to because you live there?

Mr. Stanley Ndegwa Kagere: I do not know, but I believe it was sold to a Muslim. He comes and surveys the place and then leaves.

Mr. Tom Chavangi: Is that just a builder, or----

Mr. Stanley Ndegwa Kagere: No, he is a Muslim.

Mr. Tom Chavangi: You said in your statement that you lost property worth millions. How many millions did you lose?

Mr. Stanley Ndegwa Kagere: We have not worked it out. But I know it is a lot of money.

The Presiding Chair (Commissioner Ojienda): Thank you very much, Leader of Evidence. Thank you very much, Stanley Ndegwa Kagehe, for your testimony on behalf of Mwarero Jua Kali Association.

Before I hand over to my colleagues, do you have a list of all your members of the Association? Do you have that full list?

Mr. Stanley Ndegwa Kagere: Yes, I have the list although it does not include everybody. I have a list of about 250 to 300 people.

The Presiding Chair (Commissioner Ojienda): You were evicted by the council and taken to where you are now...

Mr. Stanley Ndegwa Kagere: We were evicted from there as well. We were evicted from the town and taken to Mwarero. But now, again we have been removed from Mwarero.

The Presiding Chair (Commissioner Ojienda): Where were you taken from Mwarero?

Mr. Stanley Ndegwa Kagere: We were not taken anywhere. They just demolished our buildings and we were left there.

The Presiding Chair (Commissioner Ojienda): I just want to understand, did you sign any document to bind the council to find a place for you? Is there anything you paid the council?

Mr. Stanley Ndegwa Kagere: When we went there, the problem was in town. The hawkers were congesting the city. So, it was a problem of the entire Nairobi. I even remember the former President announcing...

The Presiding Chair (Commissioner Ojienda): I want to understand why you should be given a place to do business and not any other person sitting out there. What is the basis? Why do you come to the Commission? Are you coming, because the Council had an assurance that they would find a place for hawkers to do business? Were you coming to the Commission because you are saying that you are entitled to hawk in town and that the by-laws of the Council are unfair to you? I am just trying to understand the difference between you and any other Kenyan, because any person then can claim that they have a right to a place to do business? What is your case?

Mr. Stanley Ndegwa Kagere: Our case is different. When we were removed from town as hawkers, we were taken to Mwaro. We started running our business there from 1998 up to 2009. The Council was telling us that that was our new market. So, I do not see how anybody from outside would come and be allocated the market while we are already there. They told us: "We want to build a good market for you where you will be

comfortable.” We agreed with that proposal, but we thought it would be good for us to have a market, so that anybody would have an official place.

Where we were, we had no documents to show that we were there. But the council knows we are there.

The Presiding Chair (Commissioner Ojienda): The plan that was given by the council, they would build this new market for you...

Mr. Stanley Ndegwa Kagere: That agreement may be within the Ministry and the City Council.

The Presiding Chair (Commissioner Ojienda): Who specifically told you that they were going to build market for you?

Mr. Stanley Ndegwa Kagere: It was the ward manager of Kariokor ward.

The Presiding Chair (Commissioner Ojienda): What is his name?

Mr. Stanley Ndegwa Kagere: I do not know his name.

The Presiding Chair (Commissioner Ojienda): Did you get a chance to speak to the Town Clerk or the Mayor?

Mr. Stanley Ndegwa Kagere: We have had a chance to talk to the mayor and deputy mayor. During that time, Joe Aketch was the deputy mayor.

The Presiding Chair (Commissioner Ojienda): Did he tell you that?

Mr. Stanley Ndegwa Kagere: Yes, they had reassured us that they would build a market for us.

The Presiding Chair (Commissioner Ojienda): Did you put this in writing?

Mr. Stanley Ndegwa Kagere: No, we did not put it in writing. We used to go to his office. So, he probably has the minutes for the meetings we held.

Commissioner Chawatama: According to the findings of people who work for the Commission and they looked at your statement, they said one of the violations that were suffered was serious injuries. I do not think I have heard you talk about serious injuries. Would you want to share with us serious injuries that you sustained?

Mr. Stanley Ndegwa Kagere: At the time the council was coming to evict us when we saw that they had given Wema Construction, we knew that these people were lying to us. That is when we refused to move. When they struck that night, we went back there in the morning and then skirmishes started. That is when people got injured. There was a lady

by the name Ann Kawira who was shot in the thigh. There was someone else by the name Fantas Nderitu who was beaten until he had a lot of injuries; open wounds in his head. All these, were treated by the Independent Medical Legal Unit. I have letters with regard to that here.

Commissioner Chawatama: So, when you moved from the town area to the new market in Mwariri, you continued to pay the council a fee.

Mr. Stanley Ndegwa Kagere: Yes, we went on.

Commissioner Chawatama: And the council would accept?

Mr. Stanley Ndegwa Kagere: Yes, it accepted.

Commissioner Chawatama: And the Council would give you receipts?

Mr. Stanley Ndegwa Kagere: Yes, they were issuing receipts.

Commissioner Chawatama: So, you have copies of the receipts.

Mr. Stanley Ndegwa Kagere: yes, we do.

Commissioner Chawatama: Did the Council themselves ever tell you that they have changed the plan to build a new market and that they had decided to do something else with the land? Was this notice ever given to you?

Mr. Stanley Ndegwa Kagere: No, we were never given any notice.

Commissioner Chawatama: What did you tell us your members are doing now? Where are they situated?

Mr. Stanley Ndegwa Kagere: They are within Nairobi, but they are spread all over the place.

Commissioner Chawatama: Did it ever occur to you to want to go to court?

Mr. Stanley Ndegwa Kagere: We want to go to court, but the first person that we sought advice from, a lawyer, wanted money. We did not have money at that time. We had nothing. Even our thought was not very usual. When we went and we were asked for money, we decided to abandon the issue and just stayed.

When we heard about this Commission, we thought that our God has come. We said if our God has come, let us bring ourselves to the Commission to present our case, and that is why we are here.

Commissioner Chawatama: As a result of your experience, what kinds of hardships have your members suffered and continue to suffer?

Mr. Stanley Ndegwa Kagere: Our members have very many problems. Some have even died just because of the market being demolished. There is somebody who saw that they had lost all their property and just died of shock.

There is a lady called Mama Abdalla, who died the other day, just because of that. When they saw all their property being destroyed, they went into a shock. Very many people have suffered. Very many families have broken up because this is something that just happened suddenly. We really suffered.

Commissioner Chawatama: Thank you very much, I have no further questions. I have seen your three recommendations and they will help us. If we had the full list of your members and what they suffered, and also those who were injured, whatever medical report they have, that would tell us the extent of their injuries. Thank you.

The Presiding Chair (Commissioner Ojienda): Thank you, leader of evidence. You stand down the witness. We will resume at 2.30 p.m. I think we have two witnesses.

Mr. Tom Chavangi: We will have two witnesses this afternoon. We are supposed to have vacated this place by 4.00 p.m. There is another function.

The Presiding Chair (Commissioner Ojienda): We will resume by 2.30. By 3.30 p.m. we will be out of this place.
We have come to the end of this session.

(The Commission adjourned at 1.20 p.m.)

(The Commission resumed at 2.45 p.m.)

Mr. Tom Chavangi: Our next witnesses are Madam Zahra and Yussuf. They are witnesses No.12

(Ms. Zahra took the oath)

(Mr. Yussuf Ibrahim took the oath)

Mr. Yussuf and Ms. Zahra, welcome to this Commission. I will start with Mr. Yussuf to present. Ms. Zahra, you can fill in the gaps.

Please, do repeat your names for the Commission, Mr. Yussuf.

Mr. Yussuf Ibrahim Diap: My name is Yussuf Ibrahim Diap. I am the Secretary General of the Kenya Nubian Council of Elders. We have come here to make this presentation on behalf of the Nubian Community in Kenya.

Mr. Tom Chavangi: Kindly, proceed, and present.

Mr. Yussuf Ibrahim Diap: Commissioners, I would like to just give a brief description of the Nubian Community without taking too much time. Ours is a unique community because we originated from Sudan. We came to Kenya at the turn of the 19th Century. We have been here for about 150 years. We have been in Kenya before Kenya was a country.

We came with the British as members of the Kings African Rifles. After both world wars, we were settled mostly in Kibera. But there are other members of our community settled elsewhere in the country right from the Coast to Western Kenya. We consider ourselves citizens; and we played our role together with our African brothers during the struggle for independence. In fact, Kibera was famous for harbouring the freedom fighters.

It is also interesting to note that the first Chairman of KANU in Kibera in Nairobi was a person from our community, the late Abdulrahman. Immediately after independence, we had no problem. There was no perception of any discrimination. The only problem that came in as far as discrimination is concerned came in early 1990s, when younger people in our community started experiencing difficulties in obtaining IDs, passports, and employment in the military and civil service.

We had a good fortune in 1970 to have a Member of Parliament, the only one ever from our community the late Yunis Ali. He was championing the cause of land in Kibera. He took a Motion to Parliament that was supported unanimously, but no implementation followed.

Over the years, most of our problems can actually be encapsulated in the problem of land. I know most of you here know Kibera as a slum area. But that was not the state of Kibera. When the Nubians were settled in Kibera in 1902, the place was actually a forest and hence the Nubian name “Kibera”. But later, we understand also because of the pressure of rural urban migration, especially after independence, the population grew astronomically. That was not the only reason. One other reason was that politicians who sought their fortune in Kibera imported voters from their communities. That is a problem that continues to this day. To exacerbate our problem, the National Housing Corporation, the City Council of Nairobi started hiving off pieces of land from Kibera. The original land on which the community was settled was bordered by Ngong Road on one side, Langata Road on the southern side, by the City mortuary, Magadi Road, and the road from Kenya Science Teachers College up to Langata Road. The area was a total of 4,997.9 acres.

The present acreage is now less than 800 acres. A lot of land was hived off, especially by the NHC in the name of upgrading the standards of living. But the truth is that very few people from our community actually benefited from those houses. Instead, the houses were floated in the open market and everybody with the ability or right connections managed to get them.

We also felt that the methodology used in terms of development of houses was less than equitable in as far as Nubians are concerned. We have no other place we call home. We would not readily move into flat-like residences considering the whole family used to live together. When I say “the whole family”, I mean in the African sense, the extended family.

A lot of hiving off was done without any consultation. From 1950, where the Woodley Estate is, according to my earlier description, you would appreciate that was part of Kibera. They later named it Karanja Estate. Langata; a big chunk of land was taken and on it Otiende and Ngei estates were developed. The present Olympic Estate, we used to call it Gala Lima. The list is long.

Ironically, one of the beneficiaries of Kibera land happened to be the judiciary. The judiciary actually put up a court there. In the sense of priority, that was wrong. Peoples’ houses were demolished and the court was placed there. Yet, we had a very functional court in the DC’s compound. So, if you go to Kibera, one of the outstanding buildings is actually the court building. Later, the area known as Camp Lei, those of you who know, Moi Nairobi School, a lot of land was grabbed and people were removed from that area. The land was ostensibly given for the expansion of Moi Girls, Nairobi. But to this day, if you go to that area, you will find the place very well fenced by stone wall, enough to build three Moi Girls. The truth is that this land was grabbed by the people who were in power at that time.

The general feature of demolitions in Kibera was brutality that was used. Without proper notice, tractors, policemen and administration police would descend upon the residents and proceed to demolish. In the process, they would damage people’s property and yet people were not compensated.

The other feature of the demolition was that after demolition, the areas in the periphery, everybody was forced into the centre of Kibera, hence the present congestion.

In our recommendations, we discussed that briefly. I wish to point out that, we want it to come out clearly that many of the problems, if not all of them, were created by the Government. The Government was the chief architect of our problems, from negligence in putting up necessary infrastructure to negligence in enabling the people to own the land on which they live. We have made much representation to the Government. We have gone to various Ministries. We have gone to the highest office in the land and an announcement was made that Kibera land should be registered as communal land, to enable people in Kibera to live like people in an independent country.

We are privy to the information that such instruction was sent to the Ministry of Lands, but no implementation has taken place. Instead of we continue seeing land being hived off. Recently, land was hived off for slum upgrading, which has no benefit to anybody or to the original Kibera residents. We do not want it to be misunderstood that we want the land and exclude other Kenyans from other areas. We have lived with Kenyans from all

corners of the country, all over the years. All we are saying is that we have an inherent right to the land, and we would live with the other Kenyans as we did before.

In 2003, we went to court to petition the court on our rights, including the right to issuance of IDs and passports to our young men, to enable our youth to go for further education, or seek employment outside the country. We also petitioned about the land. Perhaps, you will appreciate the fact that in the whole of Nairobi, Kibera is the only place, that small island of Kibera is the one that remains without proper title. Yet, it was the first African settlement. Even before Nairobi existed, Kibera was already there.

Our effort to seek redress through the court was not successful, and we were advised by our advocates to seek justice elsewhere. So, we went to the African Union Commission on People's and Human Rights. We believe we will be able to win. But at least, proper recommendation should be made to the Government. But before that, we also took the case of discrimination of Nubian children, to the African Committee of Experts on the Rights and Welfare of Children, and appropriate ruling was made, recommending to the Kenyan Government not to discriminate against children. In fact, we are fortunate that many of the recommendations that we made tended to coincide with what we have in the new Constitution.

In fact, if you look at certain parts of the Constitution, you would think we were the ones who wrote the Constitution. I am glad, because we seem to have come together to respect people's rights. We have taken pride also in the fact that if the recommendations are implemented, including registration of children at birth, this will benefit all Kenyans children. The problem that we have with the youth at the age of 18, who wish to obtain ID cards will be a thing of the past. I believe we have played our civic duty for the benefit of all of us, Kenyans.

I will now address myself to the recommendations because we have already given a report to the Commission. In order to redress some of the violations, we recommend that our land rights should be restituted, including the land grabbed in the name of Moi Girls, which is privately owned. We also recommend that decongestion should be carried out in Kibera to allow people to live in a humane manner. Some of these problems were actually created by the Provincial Administration. You may not believe it, but the Provincial Administration in Kibera was acting like the Ministry of Lands. I think they only failed to give out title deeds. But they actually sell land to everybody, hence the congestion. Many of the civil servants, who work in the Provincial Administration in Kibera, have plots, on which they have large number of rooms, where they mint a lot of money without paying tax on it.

So, we say that compensation for land, possibly hived from Nubians. In order to, at least, bring Kibera to a level of other estates in Nairobi, we also recommend that there should be, at least, one Government Secondary school in Kibera. There is no Government secondary school. There is only one started recently. The rest were there by the efforts of the residents. We also recommend affirmative action in employment, especially in the armed forces and civil service. Our people should be considered favourably.

The truth is that we are perhaps a unique community because we are the only ones who truly belong to the Nairobi County. Affirmative action should also enable us to get political representation. We hasten to add that amongst the recommendations, we must consider rehabilitation of the environment that was degraded by lack of proper sanitation and unplanned construction of structures. Commissioners sitting here and my fellow Kenyans may not know that there are areas in Kibra that are not accessible by vehicular traffic and/or even human traffic. It is difficult when it rains. I make these recommendations in the hope that given the great respect we have for the TJRC, our recommendations will also be taken seriously and that some of these rights will be restituted and that Kenyans in Kibra can also live like other Kenyans. I will leave a copy of our presentation and letters that we have written to various Government departments seeking redress about lack of IDs, passports and recommendations made to the Ministry of Lands and the assistance we received from the Office of the President to compel the Ministry of Lands to register the land in the name of Nubians. Everything is here but to date, nothing has been implemented.

Thank you very much.

Mr. Tom Chavangi: Thank you *Mzee* Yusuf. Would you wish to produce this as an exhibit? Mama Zahra is there. Is there anything you would like to add?

Ms. Zahra Ali: I am happy that my son here has spoken the truth. I am one of them. My mother gave birth to me at Moi Girls Nairobi. We were five of us and when my mother and father died, they left us there. We were evicted and we were told to demolish our houses and why they demolished our houses and moved us to the middle, we do not know. Until now, there is a symbol of my parents there. They had planted mango trees which are still there and nothing has been built there. We have seen a fence that has been put up but there is nothing and the government is not bothered about where we were relocated to and they do not know where we were relocated to. That is our problem because the Nubians in Kibera are not recognized at all. Our parents were all born in Kibera but we are not recognized. Our children go through the same problems. A child who is not a Nubian will come and after two weeks, they have an ID and passport but for the Nubians, it will take even a year. The children are going through problems and up to now when road-making projects come up, our children are not getting involved even in the casual work of sweeping. Why are we not recognized and yet everything the Government does, we always support them but when it comes to other issues, we are discriminated against as Nubians especially the Nubians in Kibera? When it comes to elections, we vote and when it comes to the census, we are also enumerated but when other benefits come in, we are not considered. Up to now I have people living in my houses and they are not paying a single cent and I have no rights. I have tried the chief, the DO and I have now given up. I have said I will depend on God and we live by his providence. Since the general elections until now, people are living in our houses for free. These are unfortunate situations and the way my son has spoken today is true and that is our cry. We are not recognized because the Members of Parliament will come in and talk about this and that tribe but they do not speak about Nubians. Why not Nubians and yet we are Kenyans? That is our problem and that is what has brought us here. Our children

go to school and when they get to Standard VIII that is the end. We have no way of educating them further and they are left to establish car wash services. When the bursaries come, we are not beneficiaries and when any aid comes in for children, we do not get it. The children are just there and we cannot educate them because we have no means. People are coming in and building in Kibera but we have nothing to say. Anytime we talk, we are told that Kibera belongs to everybody. We have no rights in Kibera. Right now, there is no land where children can play football but we sit there and watch because we do not have rights in Kibera. We have come here because we want to know where justice and the truth is.

Mr. Tom Chavangi: Thank you very much, mama Zahra for the information. I would ask you just one question. These challenges that you are facing in Kibera, how have they affected the lives of the women and the girl child?

Ms. Zahra Ali: It is not the way we were before; it has become something completely different. I remember during the time of the late President it was different. When it came to the time of the second President, there was a bit of difference somewhere midway. The children are there and if I have some space in Kibera, I must build my six rooms and everybody who comes there as a chief or a DO must have something in Kibera. We have no rights and we are just left to recoil. Up to now there is nothing that we can do.

Mr. Tom Chavangi: Thank you very much, Ms. Zahra. I would like to ask Mr. Yussuf a couple of questions. You as the Secretary-General of the Nubian Community, how many are you in the whole country according to the census report?

Mr. Yussuf Ibrahim Diap: We are between 30,000 and 35,000 and most of us are in Kibera.

Mr. Tom Chavangi: Thank you very much. There is a department you have talked about that grabbed land from the Nubian community. You have talked about the National Housing and the Dam Estate. When they took this land from you, were you compensated?

Mr. Yussuf Ibrahim Diap: There was no compensation at all. The most painful thing is that when they were taken away, the owners were not given time to demolish the houses so that they can use the materials elsewhere. They were just destroyed and one of the old men whose house was demolished in the month of fasting is here and he was not compensated. Sometimes they just did it out of spite because I remember the then President during the time Zahra's house was demolished coming, taking money out of his pocket and giving them. He told them to support each other with that money.

Mr. Tom Chavangi: Thank you very much Mr. Yusuf and we are really sorry.

The Presiding Chair (Commissioner Ojienda): Thank you very much the leader of evidence. I note that the historical injustices that have been visited upon the Nubian community over time, from the time they settled in Kibra has been sufficiently told in

words. That is why I can see Mama Zahra's pain. I understand that the community has over time lost land and the appeal that the community has made to leaders of this country has not been addressed to date because as you said, no titles have been issued to the inhabitants of Kibra and the community feels discriminated against. I think you have made very clear recommendations on what ought to be done. I just want to ask you one question. A number of people may have grabbed land in what was originally Kibra but from the map you have given us, it seems to cover the area...

(Technical hitch)

The Presiding Chair (Commissioner Ojienda): I was saying that clearly, the issues that you raise are issues that are central and that must be taken up by the National Land Commission once it is formed. I am glad to inform you that one of the things that went into the National Land Policy was the question of historical injustices on land that have been carried on before and after independence. The National Land Commission will be able to investigate and deal with those issues decisively. The Truth Commission will also have the mandate on land and that is why we have heard you on those specific issues and we will also make our recommendation on those specific issues. I know that you have mentioned land that has been grabbed including the land where Moi Girls High School is built and the evictions that were carried out on people like Mama Zahra and the others without compensation and without notice. I think those are issues that need to be addressed; the question of compensation, the community interests, rights and the extent of Kibera and what remains of Kibera. I am worried that if you issue land title to the community and you are now mixed with the other people, you have married other people, you live with them and there are people living amongst you, how will you deal with a title to the Nubian community? Who will be the Nubian community if a title was issued to the community and not to individual people living on the land? As you answer that question, also address the question of how you will determine what belongs to who because even amongst the Nubians, you have some who were living on ten feet plots, others 20, others 50 by 100 and others one acre. How will you deal with that question if there was one title to the Nubian community as you have proposed?

Mr. Yussuf Ibrahim Diap: Thank you Commissioner. I appreciate that you will make appropriate recommendations to enrich the land policy. In fact, it has always been our thoughts that you cannot make a proper land policy before you address the historical injustices and these historical injustices can only be addressed through the TJRC. So it is important that the TJRC finishes its work. There should not be too much hurry in preparing the land policy before the recommendations of TJRC are made.

To come to your question, you have the present map of what remains of Kibra. I would also like to present the old map of Kibra drawn in 1934 in the Lands Office where allotments were made to all the heads of households. The names and the number of plots are there. The proper thing will be to give titles to those people whose names appear on that list but Kibra has grown and it has been enriched also by other people. The reason we are saying that we should have a communal title is for two reasons; one, to protect the land from sale by the younger people in our community, who, will later suffer the

problems of landlessness. If the land is owned communally, there will be no opportunity for any individual to want to offload the land in exchange for money. So, that will protect the individual family as well as the community.

The second reason was that it is nearly impossible now if you were to survey Kibra for the purpose of individual titles without creating even further problems. We want to believe that the problems that we have gone through including demolitions would at least be stopped. If that land is secured by that title, the question of demolitions will stop and we appreciate that there will still be a problem of ensuring that everybody has an entitlement to that area. We appreciate the magnitude of the problem but I would rather say that we will cross that bridge when we get there. The immediate problem is to secure the land in total.

The Presiding Chair (Commissioner Ojienda): Lastly, we have the Nubian community settled in Eldama Ravine, Kibos and in Kisii. We also met them and there are some in Kisumu as well as in Kibigori. There is a scheme where they have a large piece of land. If you issue title in the name of the community, do you include those who already have land elsewhere?

Mr. Yussuf Ibrahim Diap: It is difficult for me to answer that question but we may need legal advice on that. What I believe we want to secure is the land that is not registered yet.

The Presiding Chair (Commissioner Ojienda): Thank you very much.

Commissioner Dinka: Thank you very much, mzee Yusuf and Mama Zahra for your testimony. The Commissioners have heard similar presentations from some members of your community in different parts of the country. I just wanted to ask you one thing and then propose two things to you. One is that most of you have spoken about the rent issue; that people are staying in your property but they are not paying rent. This is a straight forward legal case. Have you gone to court and what was the decision? The other one is that you mentioned in your statement about children's experts commission ruling. Is the copy of that ruling included in your presentation?

Mr. Yussuf Ibrahim Diap: It is not but I will be able to provide it.

Commissioner Dinka: I think we need that. The second thing you mentioned is that the Prime Minister has signed a memorandum of understanding with your community telling how the Government should solve these issues. If you have a copy of that I think it will be very helpful to the Commission.

Mr. Yussuf Ibrahim Diap: I will start with the last recommendation. We have a copy of that memorandum to the Prime Minister and also to the President. On the rental issue, the situation was that if you do not have a title to a piece of land, you cannot even get a hearing at the Rent Tribunal. Although the legitimacy is there, legally, you cannot enforce anything. We also believe that most of these problems came as a result of the

Government because our past President went to that area and incited our people against our community by saying that we are charging very high rent and yet the land is not ours but the Government's. The same President had before given an undertaking in 1997 that the Government wanted to address the problem of slums in all urban areas in Kenya, and that people must have their titles. The same person again turns and says that you have no right to this land, and so tenants naturally became very reluctant to pay. As we are speaking now, from the past general elections, there are houses where tenants have actually taken over from the owners of those buildings. So that is the cause of the problems.

Commissioner Dinka: Thank you very much. I have no further question.

Commissioner Chawatama: I have no question but I would like the record to show that we have had an opportunity to meet in the past when you welcomed us. We came to Kibra and we had a discussion where a lot of issues came up. I thank you for your warm welcome and even at that time, we noted some of the challenges that you are going through as a community. In a sense, it laid a good foundation especially for somebody like me who is not a Kenyan because as we travelled throughout Kenya, we found a lot of challenges that the people of Kenya are going through especially the poor and the weak who do not seem to have a voice. As for the women and the children, we have found that the women really suffer in this country. We went to North Eastern and we found that mothers could not obtain birth certificates and IDs for their children and they could not even own property and even if they have some property, it is often taken away. We have noted what you have said, we have really heard, I have heard you as a woman, I have heard you also as a Commissioner and I have seen your tears and feel your pain. Not to be able to get a birth certificate for your child, a child who you know is Kenyan is painful because you know how that affects the future of that child. What we have heard from many Kenyans is the question of "are we really Kenyans"? It is disturbing that we kept hearing this over and over again. I have looked at your recommendations and truly, there are good recommendations which will help us as we think about you and we write our report and take care of your plight. We are a committed Commission and a caring Commission. We thank you; it was a pleasure to see you again. I looked up and saw a familiar face which is also a good thing.

Commissioner Shava: Mzee Yusuf and Mama Zahra I would like to appreciate your presence today. The memorandum that you have prepared for us and the answers that you have given to the questions posed by my fellow Commissioners have shed light to the presentation. I would like to join with the remarks made by my fellow Commissioners. As Commissioner Ojienda has said, the history of the Nubian community in Kenya is now clear to us. I have met you and I have met your people in different parts of the country where we have travelled. It is clear how Nubians came to Kenya and it is clear the promises that were made to them and their expectations that they rightly held from the time of the colonial government. For me, I think I would say that the picture that I have gained from the Nubian community in Kenya is a picture of a people who are in plain sight but somehow invisible, people who are encircled and increasingly and inexorably being strangled and suffocated. To me, this is grand injustice. The

Government is responsible for its citizens and their welfare and the Nubians in Kenya are citizens like any other citizens. It is difficult to see the justification for this kind of treatment. To endure such a lengthy abandonment by one's Government is clearly a very painful experience and Mama Zahra I think you brought this out very clearly. One more thing I would like to say is that everywhere we have gone we have been struck with the fact that despite all this suffering, presentations from the Nubian community have always had a reconciliatory note. We have not heard anywhere that Nubians do not want to live with their fellow Kenyans and we have not heard anywhere that Nubians do not value their fellow Kenyans. It is simply that they want to live in the community with the same respect that is awarded to other communities within Kenya. I would really like to commend you for that approach and I wish that more Kenyans would adopt that approach.

Finally, I would like to say that I have been very impressed with the quality of the presentations that we have received from the Nubian community. They have been presented always in a very eloquent manner. It demonstrates that despite strains, members of the Nubian community are educated and are able to put their case and so it behooves us to listen. As Commissioner Chawatama has said, I want you to be assured that we have listened and we have heard and we will be making the appropriate recommendations to ensure that this plight is addressed. Thank you very much.

The Presiding Chair (Commissioner Ojienda): Thank you Commissioner Shava and thank you mzee and mama Zahra for your testimony. I am aware that there is a community from Eastleigh and they were supposed to give their testimony. I am also alive to the fact that we are required to vacate this space shortly. To do justice to the testimony of the witnesses, it would only be prudent that they have a clear day. They can start tomorrow morning. If we gave them ten minutes to speak to us, the issues they want to speak may not be dealt with well. Leader of evidence, is this your last witness?

Mr. Tom Chavangi: I want to assume so Presiding Chair so that we do not conflict with the other group that is supposed to be here by four.

The Presiding Chair (Commissioner Ojienda): I take it that you are applying for adjournment and orders are granted accordingly.

Commissioner Shava: Through the Chair, perhaps it would be in order to request that the group that was to speak could stand so that we could recognize them even as we assure them that we will hear them tomorrow.

Commissioner Farah: Through the Chair also, I know some of the members of the Eastleigh group. I just wanted to assure them that you have just said that we booked this hall and that we should vacate at 4 O'clock. To do justice to your testimony, we are ready for you tomorrow at 9 O'clock. We will start with you and listen to you for as long as you want.

Thank you very much.

The Presiding Chair (Commissioner Ojienda): We recognize all of you and I hope that you are all from Eastleigh. We will hear you tomorrow. We have come to the end of the session. Because of time, we are unable to hear you and we will hear all of you tomorrow morning so be here at 9 O'clock when we start and we will give each of you an opportunity to speak to us. Leader of evidence, can we close this session?

Mr. Tom Chavangi: The session is closed as ordered.

(The Commission adjourned at 3.40 p.m.)